



# KEY GAINS AND CHALLENGES

A GENDER AUDIT OF KENYA'S  
2013 ELECTION PROCESS



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## **FEDERATION OF WOMEN LAWYERS (FIDA) KENYA**

### **Key Gains and Challenges** **A Gender Audit of Kenya's 2013 Election Process**

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***“Every country deserves to have the best possible leader and that means that women have to be given a chance to compete. If they’re never allowed to compete in the electoral process, then the countries are really robbing themselves of a great deal of talent.”***

*Madeleine K. Albright, NDI Chairman  
(former US Secretary of State)*

# Executive Summary

The title of this publication, *Key Gains and Challenges: A Gender Audit of Kenya's 2013 Election Process*, speaks to its core objective. FIDA Kenya set out to audit the electoral process and document the gains and setbacks that were observed with regard to the participation and representation of women in the 2013 elections. Gains refer to the various progressive and gender-responsive provisions contained in the Constitution of Kenya and other election-related laws, which were a result of the significant reform that Kenya underwent following the last General Election of 2007. In terms of setbacks, FIDA analyses the violations or failures to implement gains, structural gaps, and shortcomings that served to impede women's effective participation in politics and electoral processes in 2013.



In Kenya, discriminatory and exclusionary practices have served to sideline women in politics and have ensured their consistent underrepresentation. The 2013 elections heralded a turning point for this narrative, largely due to a new constitutional, legal, and institutional framework.

In this publication, FIDA Kenya analyses the gender responsiveness of the electoral environment through two key units of measurement: 1) the legal framework; and, 2) institutional interventions. In evaluating the legal framework, FIDA found that the letter of the law by way of the Constitution, national legislation, and international treaties provided the most favorable and inclusive electioneering environment in Kenya's history. While some lacunae were found in the laws, the biggest obstacle observed was the incomplete implementation—and in some instances, complete violation—of the law.

FIDA assessed and documented the compliance of key institutions in safeguarding gender gains in the Constitution, discovering that, despite a very progressive constitutional dispensation, most organs analysed took on a very passive and minimalistic approach to putting in place measures that would have enhanced the space for women as they pursued their civic and political rights. Having said that, this study is careful to document where women gains were upheld and where institutions executed measures that served to propel women's participation in politics and candidature during elections.

The third chapter details with numbers women's performance in the 2013 elections via their composition in Parliament and County Assemblies via elective and nominated seats. The chapter further analyses women's representation in appointive positions in the cabinet and county executive committees.

Conclusions are drawn by juxtaposing the performance of women vis-a-vis expectations and the available opportunities. Compared to the past, FIDA notes a historic and impressive improvement in women's representation in both elective and appointive positions. However, when analysed alongside the opportunities, the minimalistic trends emerge again—e.g., where the law requires satisfaction of the two-thirds rule in composition of a body, the bare

minimum is observed and women make up exactly one third of such bodies... *not a woman more or less*. In fact in some instances, FIDA discovered that gender composition of some bodies completely disregards the two-thirds principle for one reason or the other.

As part of the audit, documenting the direct experiences of women candidates was considered to be essential; and, interviews focused on their 2013 election experience at three key electoral stages: nominations; the campaign; and election day. The interviews also sought to reveal women candidates' most prevalent challenges and their perceived motivation of actions that were perpetrated against them. The most prevalent challenges identified were verbal intimidation, propaganda, and underhanded actions aimed at discouraging them from vying for elective positions. In the interviews, successful women candidates were asked to name the factors that contributed the most to their success and noted that the candidate's previous work, reputation, and choice of party were among the most common success factors.

Overall, FIDA found no justifiable reason for the consistent and systemic exclusion of women in politics, electoral processes, and, consequently, representation. **It simply must stop!** Toward this end, FIDA offers several recommendations targeted at the legal framework, the institutional role of the duty bearers, and other relevant stakeholders. The recommendations are premised on the need to secure women's gains, lift past barriers, and enhance women's inclusivity and equal participation in electoral and political processes.

*Ruth Aura - Chairperson*

*Federation of Women Lawyers (FIDA) Kenya - 2013*



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*Christine Ochieng'- Executive Director  
Federation of Women Lawyers (FIDA) Kenya - 2013*

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<sup>1</sup> See Appendix 1

# CHAPTER ONE

## Introduction

### A. BACKGROUND

#### 1. STATUS OF WOMEN IN POLITICS

The most recent Kenyan census indicates that women comprise over 50 percent of the Kenyan population. However, the participation of women in the electoral process does not reflect this demographic reality. The reasons behind this disparity have complex historical and cultural elements, which were never given due focus in building the nation.

Kenya is a largely patriarchal society, which has contributed to women's subjugation in both the private and public spheres. Women have historically taken a secondary position to men, and this tradition is manifested in the practices, policies, and laws of the country. In the past, women have faced several challenges, and the exclusion of women from electoral and political processes is no exception. Despite the constitutional provisions outlawing discrimination on the basis of gender, women continue to suffer setbacks whenever they seek not only elective, but also appointive, positions in Kenya. It is evident that, if we are to achieve equality and equity between men and women and enable women to realize their full potential, women must be fully involved in political life.

The most recent census determined that women make up 52 percent of the population, but women's representation in political life has yet to reach any meaningful ratio vis-a-vis their proportion of the nation. Despite being allowed to vote since independence in 1963, the women's voting bloc does not reflect its power at the polls because women have always been significantly under-registered; and indeed the Report of the Independent Review Commission on the 2007 General Elections held in Kenya (commonly referred to as the Kriegler report) confirmed this observation, noting that women were 51.4 percent of the population, yet only 47.1 percent of the voter register.

Elections in Kenya have habitually been marked by violence since the restoration of the multi-party system in 1991; and, it has been globally established that women and children suffer disproportionately from violence. In Kenya's case, this assertion was backed by the Commission of Inquiry into Post-Election Violence, also known as the Waki report, which documents the post-election violence of 2007/2008 and consistently refers to women and children being most at risk and most affected by the brunt of sexual violence, killings, injuries, loss of property, and displacement that occurred.

## Participation in Elective Office

Although Kenya can be considered a democracy that holds periodic elections, the country's performance on women's representation has been dismal compared with her East African neighbours. In the 10th Parliament (2008-2013), women comprised only 9.8 percent of the parliament, compared with Rwanda's 56 percent, Tanzania's 36 percent, Uganda's 35 percent, and Burundi's 30 percent. Overall, Kenya is 10 percent below the EAC's regional average of 20 percent representation of women in parliament.

Since Kenya attained her independence in 1963, women have not fared well in elective politics. In fact, Kenya's first parliament did not even have a nominated women representative, and the first woman to be elected as a Member of Parliament, Ms. Grace Onyango, got elected in the second General Election in 1969 to represent Kisumu Town constituency. The dismal statistics from 2007 were, in fact, Kenya's best performance since independence and before the 2013 elections. It is quite astonishing to note that, between 1963 and 2012, Kenyan voters elected only 50 women to Parliament; indeed, this figure is actually lower as it includes those who were re-elected. Women have only fared better in the lower level offices, such as local authorities. In the competition for higher office, such as the Presidency and the National Assembly, both of which command greater resources and respect, women's performance has been notably limited.

An analysis of women's participation in the political process by examining the number of women who occupy cabinet positions after being elected or nominated to parliament reveals that women have been the minority in Kenya's cabinets. Since Kenya's independence, there was no female in the cabinet until 1974 when Dr. Julia Ojiambo was appointed an Assistant Minister for Housing and Social Services; and in 1995, the first woman, Hon. Nyiva Mwendwa, was appointed to the cabinet and served until 1998. However, the trend improved in the 9th Parliament when the NARC government came to power in 2002 and appointed seven women to cabinet positions, including three cabinet ministers and four assistant ministers. On the April 25, 2013, Kenya's fourth President, Uhuru Kenyatta, made history when he nominated six women to the cabinet—the highest number the country has had since independence and a number representing one-third of the total cabinet seats. The appointments were even more remarkable considering that the women were appointed to dockets that were previously considered the preserve of men.

## Reasons for Traditional Underrepresentation of Women in Kenya

Perhaps, two main reasons account for women's exclusion from higher elective offices: 1) Kenya's patriarchal culture, and 2) its electoral system. Kenya's political contests require an enormous outlay of social capital, yet the processes of economic, cultural, and political capital accumulation still favour men more than women, regardless of men's ethnic, religious, or class divisions. Moreover, the First-Past-the-Post (Single-Member District) electoral system has produced an overly adversarial and violence-prone political contest, which often favours men who can hire and retain violent gangs and run nocturnal campaigns.<sup>2</sup>

The Kriegler report noted that one of the features that characterized undemocratic elections

<sup>2</sup> See <http://www.sidint.net/content/gender-equity-kenya-crossroads>

in Kenya was the use of “sexist tactics and violence to keep women out of the race.” This scheme has obviously succeeded in discouraging women from participation in political processes. The same report went on to conclude that, “owing to many reasons, including violence during party nominations, there were few women candidates.”<sup>3</sup>

Thus, in highly patriarchal and traditional societies, such as Kenya, women seeking leadership positions are often discriminated against and view politics as hostile and aggressive. Traditionally, women have faced several barriers, including:

- ✓ A society that has not yet acknowledged women's leadership rights or abilities.
- ✓ Lack of critical political connections that would enable women to secure the initial nomination from their respective political parties.
- ✓ Irregularities in political party primaries that lock women out.
- ✓ Inadequate financial resources.
- ✓ Lack of political party support for female candidates, especially in terms of the above-mentioned critical areas of financial resources and political networks.
- ✓ Failure to implement electoral rules, especially during party nominations, which encourages the lawlessness witnessed during the nomination process that works to the advantage of men.
- ✓ Male domination of influential decision-making structures in most political parties, giving them an edge over their female counterparts.
- ✓ The unprecedented upsurge in violence against women aspirants that marks both the party nomination process, as well as campaigns.
- ✓ Lack of solidarity among women across the political divide.
- ✓ Insufficient mobilization of media support and/or poor media coverage.<sup>4</sup>

These barriers have continued to impede the optimal participation of Kenyan women in political and governmental leadership. This audit will delve deeper into these issues as the barriers relate to the 2013 General Elections.

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3 Report of the Independent Review Commission (IREC) on the 2007 General Elections held in Kenya

4 In a media monitoring study undertaken by Strategic Research & Public Relations Ltd for the Donor Basket on Elections Programme for the 2007 General Elections, only 6 percent of the total coverage provided to political candidates on television was dedicated to women, with their male counterparts getting 94 percent of the total coverage, see the Women Shadow Parliament (WSP): “The Elusive Quest for Women's Empowerment in Electoral Politics: A Synopsis of the 2007 Electoral Year.”

## 2. CONTEXT OF THE 2013 ELECTIONS

It is essential to contextualize the uniquely pivotal nature of the March 4, 2013 General Elections, which were considered landmark owing to a number of novel factors, including:

- ✓ First General Election under the new constitutional order and new election laws.
- ✓ First General Election covering a total of six elective positions.
- ✓ First General Election to incorporate elective affirmative action seats.
- ✓ First General Election to incorporate the use of biometric technology in registration and identification of voters.
- ✓ First General Election to be conducted beyond borders, enfranchising Kenyan diaspora voters.
- ✓ A General Election that saw the launch of devolution in Kenya.

Given all of these firsts, one can conclude that the 2013 elections presented great prospects for the country. In light of the muddled 2007 elections and the violence that ensued, Kenyans were especially optimistic and hopeful.

Further, the elections envisioned the greatest leap yet for women in elective and appointive politics due to the new Constitution, which makes provisions for key women's gains, particularly in the realm of elections and politics. One of the most fundamental gains for women secured under the Constitution is the opportunity and guarantee of effective representation of women by women. Indeed, the Constitution went beyond the spirit and rhetoric by making express provisions to secure women's rights via the two-thirds principles, which 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.'<sup>5</sup> Further, the Constitution expressly requires that 'the electoral system shall comply with the principle— (b) not more than two-thirds of the members of elective public bodies shall be of the same gender.'<sup>6</sup>

In addition to this novel constitutional dispensation, the country had also undertaken aggressive institutional, legal, and electoral reforms since the previous elections in order to ensure the delivery of democratic, credible, free, and fair elections. Expectations for the elections were high—and reasonably so. Women were particularly optimistic because of the expanded electoral and political space that promised a turning point for women's leadership in Kenya.

## B. FIDA KENYA'S ELECTION ENGAGEMENT

FIDA Kenya is a non-governmental, non-partisan, independent, non-profit making, membership organization with a vision for a society that is free from all forms of discrimination against women and a mission to ensure that women are free from all forms of injustices. Against the background of systematic exclusion of women in political life, FIDA Kenya implements strate-

<sup>5</sup> Article 27(8), Constitution of Kenya

<sup>6</sup> Article 81, Constitution of Kenya

gies aimed at increasing the participation of women in the political field. FIDA Kenya has consistently endeavored to overcome the barriers and challenges to women's representation and participation in electoral processes.

In conducting activities related to elections, FIDA Kenya's main objective is to promote gender equality by identifying the specific challenges women face in engaging in the electoral process and developing strategies to overcome such challenges. We anticipate that, by facilitating women's engagement, the representation of women in elective positions will gradually increase, and women voters will feel more empowered to vote for them. With greater numbers of women representing and addressing the issues specific to women's lives, we expect that the situation of Kenyan women to improve. To this end, FIDA Kenya has, and continues to, monitor legislative, policy, and administrative decisions in the implementation of the Constitution that relate to the electoral process in order to ensure compliance and gender inclusiveness.

In the lead up to the March 4, 2013 general elections, FIDA Kenya conducted a number of interventions that focused on gender responsiveness of the electoral process throughout the electoral cycle. Part of FIDA Kenya's engagement included training aimed at empowering women candidates to participate effectively in the electoral process both as informed voters and candidates.

To broaden support for women's engagement in politics, FIDA Kenya equipped community partners with tools and strategies that would increase the protection of women as they engaged in the political field. FIDA pursued this goal by holding public rallies, as well as community conversations, aimed at advocating for, and dispelling misconceptions associated with, women's leadership.

In order to ensure that the legal environment was conducive to women's participation, FIDA Kenya monitored the development of relevant laws, such as the Political Parties Act, the Elections Act, and the Elections Regulations, and provided input to improve the gender responsiveness of their provisions and ensure constitutional gains were secured for the benefit of women. Monitoring of policy development and administrative and judicial decisions as they related to the electoral process was also carried out to ensure that issues related to gender and increasing women's participation were considered. The analysis of the legal and political environment saw FIDA Kenya engage in a number of court cases as an interested party. This effort included providing submissions on the Advisory Opinion issued by the Supreme Court on the implementation of the two-thirds gender rule<sup>7</sup> and the petition filed at the High Court by the National Gender and Equality Commission on the invalid composition of party nomination lists provided by political parties to the Independent Electoral and Boundaries Commission.<sup>8</sup> The importance and impact of these cases are discussed later in this report.

Other initiatives included the profiling of aspirants in collaboration with the Association of Media Women in Kenya (AMWIK). Profiling helped bring to focus the fact that women were

7 In the Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012] eKLR, Supreme Court of Kenya, Advisory Opinion No. 2 of 2012.

8 National Gender and Equality Commission v Independent Electoral and Boundaries Commission & another [2013] eKLR, High Court of Kenya, Constitutional & Human Rights Division Petition 147 of 2013.

now brave enough to engage in competitive politics in large numbers, and this activity was done in the hope of encouraging more women to become aspirants.

FIDA Kenya is also a member of the Elections Observation Group (ELOG), which is established as a long-term and permanent national platform for civil societies, faith-based organizations, and other key stakeholders interested in promoting citizen participation in the electoral processes through non-partisan, impartial domestic observation and objective reporting of elections and referenda in Kenya. Through this platform, FIDA was an integral part of various election observation processes, including consistently monitoring the electoral landscape, the nominations process, and by-elections; engaging in a mock elections exercise; and observation of the General Elections.

Towards monitoring women's rights violations during the electoral period, FIDA Kenya set up a systematic short code (SMS) hotline for receiving information on various offences and forms of violations against women.

Overall, FIDA Kenya was able to identify specific areas for legal, structural, and institutional reforms, the need for increased voter education, and strategies to affect affirmative action principles and empower women aspirants to this end. In addition, FIDA was able to identify key areas for future interventions aimed at increasing women's participation. Ultimately, FIDA's engagement led to a number of recommendations directed at relevant institutions in pursuit of increased participation of women. This audit is the direct result and culmination of FIDA Kenya's engagement in the 2013 elections.

## C. SCOPE & METHODOLOGY SECTION

The specific methodologies applied in the audit are set out below.

- ◆ Desk review and research, including:
  - Analysis of the legal framework
    - National laws and policies
    - Regional instruments ratified by the Republic of Kenya
    - International instruments ratified by the Republic of Kenya
  - 2013 election results, including Parliament (both Senate and National Assembly) and County Assemblies
  - ELOG and FIDA Kenya monitoring reports, among others
- ◆ Institutional watch, including comprehensive analysis of the effectiveness of the





following institutions and stakeholders (pre-, during, and post-election) in ensuring minimal electoral irregularities and protection of candidates, as well as positive measures taken towards enhancing women's participation:

- Independent Electoral and Boundaries Commission (IEBC)
- Registrar of Political Parties
- Political Parties
- Judiciary
- Security Forces
- Civil Society
- Media



- ◆ A sample of key informant interviews, using a post-election audit tool developed to gain first-hand information from women candidates as to challenges faced pre-, during, and post-election.



- ◆ Critical analysis and documentation
  - Analysis and audit of the elections system and environment vis-a-vis women's experiences, gender equality, and the aim of gender equality gains contained in the Constitution



- ◆ Recommendations
  - At the end of the process, FIDA Kenya developed recommendations for suggested actions by relevant duty bearers to address shortcomings identified in the audit.



## CHAPTER TWO

# Gender Responsiveness of the Electoral Environment

## A. LEGAL FRAMEWORK

The legal framework plays a key role in enhancing or impeding women's participation in electoral and political processes. Ideally, the law would provide an avenue to guarantee formal rights and remedy past injustices, such as discrimination and marginalization of women.

For the Kenyan laws to be considered gender-responsive and effective, they should have mechanisms and solutions that seek to address the many barriers and challenges that have impeded women's participation in electoral and political processes.

This chapter seeks to assess the gender responsiveness of the electoral, legal, and policy framework in order to illustrate the environment that women encountered as they pursued their electoral and political rights.

### 1. THE ELECTORAL SYSTEM

Kenya's electoral system is a combination of two mechanisms: First-Past-the-Post, and Proportional Representation.

**First-Past-the-Post (FPTP)** is the more predominant limb of Kenya's electoral system and, in fact, is the most widely used electoral system in the world. The Kenyan electoral system has been a First-Past-the-Post system since independence. In this system, the winning candidate is the one who gets the largest number of votes in an election. The rest of the votes garnered by the other candidates do not count. This system has been roundly criticized in the past as, among other things, it encourages a "winner-take-all" mentality. Consequently, reform of the electoral system has been a part of Kenya's constitutional reform debate.

The FPTP system is generally not deemed favourable for increasing women's participation in elective leadership. In fact, the FPTP system does not usually lead to many successful women candidates. In the United States—a country that uses FPTP—women hold 98, or 18.3 percent, of the 535 seats.<sup>9</sup> A similar outcome is also evident in the United Kingdom, which also follows an FPTP system. Out of 650 MPs, only 143 women (22 percent) were elected in the 2010 elections.<sup>10</sup> Conversely, in Denmark, where a proportional representation system is used, 37.7 percent of MPs are women.<sup>11</sup>

9 See [http://www.cawp.rutgers.edu/fast\\_facts/levels\\_of\\_office/Congress-CurrentFacts.php](http://www.cawp.rutgers.edu/fast_facts/levels_of_office/Congress-CurrentFacts.php)

10 See [www.parliament.uk/briefing-papers/SN01250.pdf](http://www.parliament.uk/briefing-papers/SN01250.pdf)

11 See <http://www.kvinfo.dk/side/675/article/53/>

In Kenya, FPTP has been well documented as being unfriendly to achieving a fair level of representation for women.<sup>12</sup> During the 2013 elections, this very narrative played out. It was not uncommon to hear voters say that, as much as they would want to vote for a woman, they did not want to “waste” their votes as the chances of the woman winning were pretty slim to begin with.

The drawbacks of FPTP are further aggravated in a society such as Kenya's that remains both disinterested and sometimes antagonistic toward promoting women's engagement in active and competitive politics. Besides the 47 elective seats reserved for women in the National Assembly, the FPTP system has not provided any particular benefit to women candidates as it does nothing to address historical injustices and other disadvantages that naturally accrue to special interest groups.

**Proportional representation (PR)** is a concept in voting systems used to elect an assembly or council. PR means that the number of seats won by a party or group of candidates is proportionate to the number of votes received. The basic principles underlying proportional representation elections are that all voters deserve representation and that all political groups in society deserve to be represented in the legislature in proportion to their strength in the electorate.

*How It Works.* Legislators are elected in constituencies and wards.<sup>13</sup> Each party puts up a list or slate of candidates equal to the number of seats in the constituency (or ward). Independent candidates may also contest, and they are also listed on the ballot as if they were their own party. Once the votes are counted, the nomination slots are shared among the parties according to the proportion of votes they received.

There are three broad types of list systems, which include a closed list, an open list, and a free list. Kenya uses a closed party list system. As the name suggests, a closed party list is one in which the list is developed by the party and once developed and handed over to the electoral commission, the parties cannot change the list or the order of names on the list. Seats are awarded to candidates on the party list in the order they appear on the submitted list.<sup>14</sup>

The true essence of PR is that every vote counts and everyone should have the right to fair representation. However, as implemented in Kenya, PR does not achieve this gain of utilizing all votes cast because **allocation of the nominated seats is based on the number of elective seats won by political parties**, rather than the number of votes received.

Thus, in Kenya, parties nominate additional members in proportion to the number of elective seats won. This type of PR system tends to produce disproportionate outcomes and to be biased in favour of larger political groups because larger parties will produce more elected members and, thus, have the opportunity to nominate more members from the party list. Equally, it follows that the smaller parties, which tend to be friendlier to women's engagement in politics, do not get opportunities to nominate as many members.

12 Report of the Independent Review Commission (IREC) on the 2007 General Elections held in Kenya

13 Kenya has 290 constituencies spread across 47 counties. The constituencies are broken down into 1,450 wards.

14 Article 90 Constitution of Kenya 2010

Another challenge associated with the proportional representation system is that the party leadership puts together the party list. Thus, individuals receiving a winnable place on the party list are usually those with better relationships with the party leaders. Therefore, it can result in the nomination of candidates who are partial to the party leadership and, therefore, likely to be puppets, rather than representatives of the special interest groups they are meant to serve.

In the 2013 elections, PR did not present as many opportunities as it should have given that the two-thirds principle of gender representation was not fully implemented at the national level. Women actually received fewer seats at the national level through nomination than in the previous mandate.

**Assessment of the Electoral System:** As it is currently, the Kenyan electoral system can guarantee sustainable women's representation only if accompanied by an electoral environment that encourages and enables women to contest elections successfully in the single-member constituencies (i.e., FPTP). Such an environment can be achieved when political will exists and when political parties make conscious and deliberate efforts to include women in leadership, policies, and practice.

## 2. INTERNATIONAL LEGAL FRAMEWORK

A country's legal framework includes international conventions, which enrich a country's status by establishing international law, customs, best practices, and the generally recognized principles of law. In fact, Kenya recognized this significance in its Constitution by recognizing international law and the conventions Kenya subscribes to as part of its domestic law:

*The general rules of international law shall form part of the law in Kenya. Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.*<sup>15</sup>

The international instruments contain many provisions that require action on the part of the Government of Kenya to ensure that discrimination against women, which has contributed to their low representation in the political arena, is eliminated and that active efforts toward increasing women's participation are made.

Given the Constitution's recognition of international treaties and conventions as part of the domestic legal framework, a discussion of the international and regional instruments related to women's political participation to which Kenya is subject is relevant.

### Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) has had a profound influence on the development of international human rights law with its principles elaborated in a number of binding instruments. Though not technically binding on signatories, the 1948 Declaration has acquired the status of customary international law, owing to the fact that most countries have consistently promoted adherence to its articles and accepted its provisions as law for over 50

<sup>15</sup> Article 5 and 6, Constitution of Kenya

years. The UDHR has some important provisions related to gender equality, including:

- ✓ Prohibition of discrimination
- ✓ Need for inclusion and participation of all (including women) in governance

Given the current struggles that women face, it is surprising to note that these two important principles have existed for a long time at this highest echelon of international law. It provides women in Kenya with an undisputable claim and right to realize equality in electoral and political life. Further, these principles are well articulated in Kenya's Constitution and other national laws.

### **International Covenant On Civil And Political Rights (ICCPR)**

Kenya is a party to the ICCPR, which provides that every citizen shall have the right and the opportunity without any distinctions and without unreasonable restrictions to:

- ✓ Take part in the conduct of public affairs, directly or through freely chosen representatives;
- ✓ Vote and be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and
- ✓ Have access, on general terms of equality, to public services in their country.

The importance of the rights outlined in the first and last bullets protect women's engagement in political life despite any traditional customs and practices, which generally dictate that women should not pursue leadership roles.

### **Convention on the Elimination of all Forms of Discrimination (CEDAW)**

CEDAW is a key and indispensable reference for women rights' advocates as it outlines several important principles related to women's involvement in political life.

- ✓ It seeks to integrate women into decision-making processes and eradicate impediments women face in effective participation in societal affairs.
- ✓ It provides that State parties shall take appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.

### **African Charter on Human and People's Rights (ACHPR)**

Regionally, Kenya is a party to the ACHPR, which establishes the following key principle for elections:

- ✓ Every citizen (both women and men) shall have the right to participate freely in the government of their country, either directly or through freely chosen representatives in accordance with the provisions of the law.

This principle establishes the crucial link between democracy and inclusion. Kenya has since harmonized this provision into its Constitution, which states that ‘the people may exercise their sovereign power either directly or through their democratically elected representatives.’<sup>16</sup>

### Other Regional Conventions

Although Kenya has only signed some of the key regional treaties and is yet to ratify them all, the intention to live up to the principles of such instruments warrants mention. The following conventions have been signed, though not ratified, by the Government of Kenya:

- ✓ The African Charter on Democracy, Elections, and Governance, which aims to promote representative governance and promote and protect the full realization of rights.
- ✓ The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol), which aims to ensure participation in the political and decision-making processes in the country.

In 2004, the Government of Kenya signed the Declaration on Gender Equality in Africa<sup>17</sup> through which State parties undertake to ratify the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa and ensure its implementation.

**Assessment of the International Legal Framework:** In the opinion of FIDA, Kenya has a solid international foundation for the protection and enhancement of women’s rights as women pursue representation and leadership. However, even where instruments have been signed and ratified, the Government of Kenya is yet to fully meet its obligation as duty bearer by putting in place policies or laws that give impetus to women’s participation in political life and aggressively address discrimination.<sup>18</sup>

## 3. THE 2010 CONSTITUTION OF KENYA

*“The strength of the Constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty bound to do his share in this defense are the constitutional rights secure.”*

*Albert Einstein*

For a very long time, Kenyan legislation had not been addressing the prevalent gender equity and equality issues that hamper women’s political participation and representation. This reality changed during the historic constitutional referendum held on August 4, 2010 where Kenyans voted in favour of a new Constitution that aims to enable men and women to realize equal rights and opportunities.

The Constitution of Kenya has been lauded as one of the best in the world, particularly in its provisions on human rights, equality, and inclusiveness. FIDA Kenya is inclined to agree, and, indeed, the preamble to the Constitution echoes this fact:

<sup>16</sup> Article 1(2), Constitution of Kenya

<sup>17</sup> Legal Instrument available on [www.achpr.org/instruments/declaration-on-gender-equality-in-africa/](http://www.achpr.org/instruments/declaration-on-gender-equality-in-africa/)

<sup>18</sup> CEDAW Concluding Observations on Kenya 2011 Report; CEDAW/C/SR.963, CEDAW/C/SR.964

*...the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law...*

*...human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.*

These national values and principles guide all Kenyans and bind all state organs, state officers, and public officers.

Women in Kenya have great cause for celebration as the Constitution contains several provisions that aim to protect, fulfill, enhance, and promote women's rights in Kenya in all spheres of life. These provisions are commonly referred to as 'women's gains.' Below is an exhaustive discussion of these constitutional provisions and their significance in expanding the space for

women to exercise their civil and political rights.

### **Gender Parity in Elections and Politics: Two-Thirds Rule of Gender Representation**

One of the most fundamental women's gains secured under the Constitution is the opportunity and guarantee of effective representation of women via the ***two-thirds principle of gender representation***. The two-thirds principle dictates that 'not more than two-thirds of the members of appointive and elective bodies shall be of the same gender.' This principle has been reiterated in two significant parts of the Constitution—the Bill of Rights and the general principles of the electoral system

*Article 27(8) states: In addition to the measures contemplated in clause (6), 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.*

*Article 81 states: The electoral system shall comply with the following principles—(b) not more than two-thirds of the members of elective public bodies shall be of the same gender.*

***Assessment of Compliance with the Two-Thirds Gender Principle:*** The two-thirds provision is, indeed, a significant gain, and the immediate rationale of the two-thirds principle is to bring about gender parity and gender equity in representation, which is presented through the two-fold processes of elections and appointments in Kenya. Therefore, all elective bodies must approximate the image of the society they purport to represent.

Full implementation of the two-thirds principle would have resulted in at least one-third representation of women in Parliament, which includes the National Assembly and the Senate, and in the County Assemblies. As it is, this principle was only realized at the County Assembly level. Unfortunately, this principle is one of the key gains that suffered the greatest setback in terms of partial implementation. Attempts to require that the two-thirds principle be implemented in Parliament did not result in a positive outcome. Although the Constitution provides for the two-thirds gender rule of representation, it fails to provide a clear mechanism for the realization of the same in the Senate and the National Assembly. The main challenge to the actualization of this principle was the actual impossibility of realizing the two-thirds principle

without an amendment to the current Constitution.

A request for an advisory opinion was filed by the Attorney General at the Supreme Court seeking a determination as to whether the two-thirds rule was to be implemented immediately—i.e., during the 2013 elections—or progressively. The Supreme Court determined that the two-thirds principle was to be realized progressively and the requisite implementing law passed by 2015.<sup>19</sup> (*A substantive analysis of this court case is presented later in this report*). As such, after the March 4, 2013 elections, this affirmative action principle was only upheld in relation to County Assemblies, while the Parliament comprises more than two-thirds of male members.

## **Equality, Non-Discrimination, and Inclusion**

The Constitution delivers on its promise of gender equity through various provisions.

### ***Equality and freedom from discrimination***

Article 27 of the Constitution demands participation, inclusiveness, and protection of minorities and marginalized groups and demands that legislative and policy measures be taken to facilitate the implementation of the Constitution. Article 27(3) of the Constitution states that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres. Equality is defined as similarity of treatment as it is legally, constitutionally, and divinely given. It is a fundamental right. These provisions provide important additional protections that go beyond the protection from discrimination provided for in Article 27(4) of the Constitution, which prohibits discrimination on grounds of disability and age. Article 27(6) recognizes the principle of affirmative action, a concept that requires the State to take legislative and other measures designed to redress any disadvantage suffered by individuals or groups as a result of past discrimination. Article 27(8) requires the State to take measures that ensure that no more than two-thirds of the members of elective or appointive bodies are of the same gender. Separate provisions create reserved positions for women in the National Assembly, Senate, and County Assemblies. These provisions have had a significant positive effect on women's representation and have enhanced women's role in the decision-making process at all levels of government.

### ***Implementation of rights & fundamental freedoms must address vulnerable groups***

Article 21(3) of the Constitution imposes an obligation on state actors to address the needs of all vulnerable groups in society, including women. It demands recognition of human rights as one of the ground rules for national development and actualization of fundamental rights and responsibilities for both men and women. To fully realize this gain, there is a need to integrate the promotion and protection of human rights into national policies and to support the inclusion of human rights provisions through subsequent legislation.

### ***Political rights***

Article 38(1) of the Constitution provides that every citizen has the right to make political

19 In the Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012] eKLR, Supreme Court of Kenya, Advisory Opinion No. 2 of 2012



choices, which include the right to form and participate in forming a political party. Every citizen has the right to participate in the activities of or recruit members for a political party. The provision further secures the right to free, fair, and regular elections based on universal suffrage and the free expression of the will of electors. It secures the right of women to participate as voters and in politics to ensure their representation.

### ***Inclusion of women with disabilities***

Article 54 of the Constitution focuses on the rights of persons with disabilities, who include women. It provides for the right of persons with disability to be treated with dignity and respect. It states that every person with a disability has the right to access educational institutions, public places, transport, and information. The article provides for the right to use sign language, Braille, or other means of communication and for the right to access materials or devices to overcome constraints arising from disability. It complements Article 7 of the Constitution, which mandates the State to promote Kenyan sign language, Braille, and other communication formats and technology accessible to persons with disabilities. Article 54 further affirms the duty on the State to ensure that persons with disabilities occupy 5 percent of positions in appointed and elected bodies. These provisions represent a considerable shift from the repealed Constitution, which did not recognize disability as grounds for discrimination against women.

### ***Inclusion of youth***

Article 55 of the Constitution recognizes the rights of the youth (who include women) and their contribution to national development. The Constitution places an obligation on the State to take measures, including affirmative action programmes, to ensure that the youth have access to education and training and opportunities to associate, to be represented, to participate in political, social, economic and other spheres of life, to have access to employment, and to be protected from harmful cultural practices and exploitation.

### ***Inclusion of minorities and marginalized groups***

Article 56 of the Constitution demands that the State puts in place affirmative action programmes designed to ensure that minorities and marginalized groups (including women) participate and are represented in governance and other spheres of life. The State is obliged to provide special opportunities in educational and economic fields, in employment, and in developing cultural values, languages, and practices of the minorities and marginalized groups. The State must also ensure that they have reasonable access to water, health services, and infrastructure. Article 56 of the Constitution provides additional rights and protection for marginalized groups, a classification that encompasses all those vulnerable to discrimination, including women.

### ***Political parties, gender equality & inclusion***

Article 91 of the Constitution mandates political parties to respect the right of every Kenyan to participate in the political process. This provision demands the respect of human rights and fundamental freedoms and gender equality and equity. It requires each political party to respect the right of minorities and marginalized groups to participate in the political process



in accordance with the principle of the Constitution and the rule of law. Together with other constitutional provisions, Article 91 goes a long way in creating an environment that encourages equal participation for men and women willing to run for elective posts. Political parties as bodies with elective positions must uphold the core values and general principles of equity and equality. Therefore, it is the duty of all political parties to accommodate all Kenyans, be they women, marginalized groups, minorities, persons with disabilities, or the youth as all these categories of people best represent the issues affecting them.

### ***Provision for affirmative action seats in the Senate***

Article 98 of the Constitution states that the composition of the Senate must include forty-seven (47) members, each elected by the registered voters of the counties with each county constituting a single-member constituency. Sixteen (16) women members must be nominated by political parties according to the proportion of their members in the Senate. The provision also requires two members—one man and one woman—representing the youth, and two members—one man and one woman—representing persons with disabilities, to be part of the Senate. These provisions ultimately create an opportunity for women to be represented in the Senate.

### ***Legislation to promote the representation of women and other groups***

Article 100 of the Constitution confers on Parliament the duty to enact legislation that promotes the representation of women, persons with disabilities, youth, ethnic and other minorities, and marginalized communities in Parliament. This substantive provision is crucial in the materialization of the two-thirds gender principle.

### ***Gender representation in devolved government and structures***

Article 175 of the Constitution sets out the principles that must govern devolved government. Regarding gender representation, Article 175(c) of the Constitution envisages a situation where no more than two-thirds of the members of representative bodies in each county government are of the same gender. Article 177(1)(b) of the Constitution provides that a county assembly must consist of a number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender.

The same emphasis on the two-thirds gender principle is reiterated in Article 197(1), which provides that not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender. All the provisions on the two-thirds gender principle are designed to ensure that both men and women, as well as other vulnerable groups, are involved in the decision-making process and the general running of affairs in the county.

### ***Gender representation in public service***

Article 232 of the Constitution provides for the values and principles of public service, which include the duty to afford adequate and equal opportunities for appointment, training, and advancement at all levels of public service for men and women, members of all ethnic groups, and persons with disabilities.

Rights provided in the Constitution may not be limited

Article 24 of the Constitution provides that a right or fundamental freedom in the Bill of Rights cannot be limited except by law, and even then, the extent of that the limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom and after taking into account all relevant factors. Therefore, women's rights must not continue to be treated as obscure undefined rights.

***Assessment of Compliance with Constitutional Provisions on Equality, Non-Discrimination and Inclusion:*** The foregoing scrutiny of constitutional gains for women is necessary and clear proof that the highest and most influential law of the land has provided a suitable and favourable ground for women to pursue their civic and political rights. It is also the baseline and yardstick by which the reader must assess the electoral environment and performance of institutions and other stakeholders who had a responsibility to enhance the participation of women in elections and politics. Implementing bodies had wide discretion and constitutional backing to significantly expand the space for women's participation through faithful implementation, as well as formulation, of positive measures inspired by the Constitution.

Unfortunately, despite these very progressive gains, the experiences and performance of women during the 2013 elections was not as significantly altered as expected. This outcome is largely due to explicit violation or half-hearted implementation of the Constitution.

For all these progressive provisions to have had any effect in addressing gender inequality, implementation was crucial, otherwise they would remain rights merely on paper. Implementation rested on duty bearers, i.e., those organs, state offices, public offices, and institutions mandated or otherwise predisposed to guarantee the actualization of these rights. For instance, it was incumbent on Parliament to take the necessary legislative measures required to implement these gains. Election-related institutions and political parties similarly had a key role to promote women's leadership and ensure women reaped the gains.

Although the Constitution undoubtedly offers a wide range of protective clauses aimed at promoting equality and curbing discrimination of women, FIDA Kenya contends that most of these gains were not fully realized during the 2013 elections. This audit will explain the experiences, actions, and inactions of the duty bearers during the 2013 elections to support its conclusion. Needless to say, Kenya still has some ways to go toward developing a culture of constitutionalism.

#### **4. THE 2011 ELECTIONS ACT**

The Elections Act is the playbook that governs and determines the procedure and nature of elections in Kenya. It provides for the conduct of elections for the various elective offices. FIDA Kenya analyzed this key act and its accompanying regulations in order to establish the degree to which it is gender-responsive.

One of the gains achieved by the Elections Act is the consolidation of all electoral laws into one piece of legislation; previously, the electoral framework was contained in various pieces of legislation.

The main focus of the Elections Act is the conduct of elections in line with the Constitution, and, toward this effort, it includes and expands on various constitutional provisions on elections. The Act also contains provisions aimed at enhancing the space for increased participation of women in politics. Some of the key highlights and gains include:

- ✓ Any citizen of Kenya who has attained the age of 18 years can register as a voter. Through this provision, suffrage for young women is guaranteed.
- ✓ Voters wishing to transfer their registration to an electoral area other than where they registered are permitted to do so. The provision ensures that even women who have been internally displaced as a result of civil strife can transfer registration and participate.<sup>20</sup>
- ✓ Persons are still eligible to vote even if they fail to produce a voter's card, which reduces the barriers to women's suffrage. It is useful because, in some cases, women's voter cards are withheld or in the custody of their spouses or male relatives.
- ✓ Makes provision for proportional representation through the use of mixed-member party lists pursuant to the Constitution.
- ✓ Where a representative from a political party dies, it provides that the replacement from the party list must be of the same gender.
- ✓ Defines as an offence to be in possession of someone else's voting card without authorization, which gives women a remedy when their cards are withheld.
- ✓ Defines as an offence the use of force or violence during the election period, i.e., to compel or prevent a person from voting. This measure responds to past situations in which violence has forced women to stay away from the polls.
- ✓ Defines as an offence for a person to interfere with free political will by canvassing and campaigning using language that is threatening, abusive, or insulting or engaging in any kind of action that may advocate hatred, incite violence, or influence the voters on grounds of ethnicity, race, religion, gender, or any other grounds of discrimination.
- ✓ Defines as an offence, leading to disqualification, for a candidate to engage in bribery or violence during the nomination process.
- ✓ Defines as an offence for a political party to knowingly nominate a candidate, who does not meet constitutional requirements; where such offence is grave, the presidential candidate of that party shall not be eligible to contest.
- ✓ The election regulations incorporated affirmative action by subsidizing half the nomination fees of all women candidates.

**Assessment of the Elections Act:** All these provisions address challenges that women have previously faced while pursuing elective office. However, in the same breath, FIDA Kenya

20 Kenya Human Rights Commission: "Out in the Cold: The Fate of Internally Displaced Persons in Kenya 2008-2009"

concluded that the Act took on a very minimalistic approach in giving life to the letter and spirit of the Constitution. Namely, only the mandatory gender equality provisions were incorporated. The Act did not go further to extrapolate the various gender gains by providing more clarity on implementation. The following gaps and drawbacks in the Act were noted:

- ✓ The act did not clarify implementation of the two-thirds principle via the proportional representation mechanism.
- ✓ While the act made provision for a mixed-member party list, it simply restated the constitutional provision. The act should have included further provisions, such as regulating the development of the lists or affirmative action measures requiring the party list to start with a woman's name in order to present increased chances for representation.
- ✓ The election timelines suffered several amendments at the hands of Parliament. These amendments affected the safeguards put in place to curb party hopping. The amendments also affected the electoral commission's ability to manage the elections, resulting in a disorganized electoral environment that disproportionately affected women's candidature.
- ✓ The Act failed to include a provision for the principal register to be gender disaggregated, which would have facilitated monitoring both by the commission and other stakeholders, especially bearing in mind the historical under-registration of women voters.
- ✓ There was a requirement to only produce the identification document presented during registration. This condition may have created a barrier in cases where husbands and other male relatives withhold women's identification cards.
- ✓ With regard to voter education, the Act should have provided some more specific guidance on timelines within which voter education should be conducted and even on targeting of traditionally marginalized groups.
- ✓ With regard to petition fees, the Act requires petitioners disputing the validity of election results to deposit a security for costs within 10 days of filing a petition. While potentially effective in discouraging frivolous suits, the costs proved to be prohibitive, especially for women candidates who tended to be less financially resourced.

| <b>Position against which a petition is filed</b>   | <b>Cost in Kshs.</b> |
|---|----------------------|
| Member of a County Assembly                         | 100,000              |
| Member of Parliament (National Assembly and Senate) | 500,000              |
| County Governor                                     | 500,000              |
| President   | 1,000,000            |

While several of these items were regulated by the Elections Regulations, defining them in the Election Act itself would have given them greater legal sanction—and perhaps have encouraged greater compliance by the duty bearers. Further, as a legal act, it may have created greater awareness among the public at large.

## Electoral Code of Conduct

The Electoral Code of Conduct is a schedule of the Elections Act and deserves special mention as it is pivotal to guaranteeing free and fair elections. The objective of the Code was 'to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance in which political activity may take place without fear, coercion, intimidation, or reprisals.'<sup>21</sup> The Code was binding on all political parties and candidates, together with their officials and agents.

Some relevant commitments required of registered political parties, referendum committees, officials of political parties and referendum committees, and candidates included:<sup>22</sup>

- ✓ Adhering to the values and principles of the Constitution
- ✓ Promoting gender equality within political parties
- ✓ Condemning, avoiding, and taking steps to prevent violence and intimidation
- ✓ Promoting voter education
- ✓ Instructing candidates, office bearers, agents, members, and persons who support the political parties of their obligations under the Code
- ✓ Promoting the fair representation of special interest groups
- ✓ Generally, affirming the rights of all participants in an election to:
  - Express divergent political opinions;
  - Debate and contest the policies and programmes of other parties;
  - Canvass freely for membership and support from voters;
  - Subject to the Public Order Act, hold public meetings;
  - Attend public meetings convened by others;
  - Distribute non-offensive electoral literature and campaign material;
  - Publish and distribute non-offensive notices and advertisements;
  - Erect non-offensive banners, placards, and posters;
  - Remove all banners, placards, and posters erected during the election period;
  - Promote free electoral campaigns by all lawful means; and
  - Co-operate with the Commission and the relevant government agencies and other authorities in the investigation of issues and allegations arising during the election period.

The Code also contains clauses aimed at building a culture of tolerance, which require adherence by those bound by the Code. It includes obligations to:<sup>23</sup>

- ✓ Publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language, or any kind of action, which may lead to violence or intimidation;

21 Section 3, Electoral Code of Conduct, Schedule Two, Elections Act 2011

22 Section 5, Electoral Code of Conduct, Schedule Two, Elections Act 2011

23 Section 6, Electoral Code of Conduct, Schedule Two, Elections Act 2011

- ✓ Refrain from any action involving violence or intimidation;
- ✓ Ensure that no arms or weapons of any kind are carried or displayed at political meetings or any march, demonstration, or other event of a political nature;
- ✓ Do nothing to impede the right of any party, through its candidates, canvassers, and representatives to have reasonable access to voters for the purpose of conducting voter education, fundraising, canvassing membership, or soliciting support;
- ✓ Refrain from any attempt to abuse a position of power, privilege, or influence, including parental, patriarchal, state, or traditional authority for political purposes, including any offer of reward or threat of penalty; and
- ✓ Avoid any discrimination based on race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language, or birth.

The Code also regulates engagement with the Independent Electoral and Boundaries Commission (IEBC).<sup>24</sup> It is a positive measure as it reinforces the authority of the IEBC and clearly delineates the roles of the political parties vis-a-vis the IEBC. Structured regulation of the political field is of benefit to women in that it limits the space for abrasive and aggressive modes of political engagement, thereby encouraging their participation.

There are two sets of sanctions applicable to breaches of the Electoral Code of Conduct, which provide a clear way for women candidates to seek redress:<sup>25</sup> sanctions that are issuable by the Commission; and sanctions that are issuable by the High Court at the insistence of the Commission.

***Assessment of the Electoral Code of Conduct :*** It is FIDA Kenya's finding that the Code offered wider protections, and its full implementation would improve the field, for women's engagement in political life. Overall, the Code was gender-responsive and its effective implementation would curb common disruptive and abusive practices that women candidates face and that work to exclude women from competitive politics. The Code set out provisions that could generally promote an atmosphere and culture of tolerance, courtesy, and respect with regard to engagement in politics.

It had been hoped that these provisions would make the political field friendlier to women and redress the combative and hostile nature of competitive politics. Unfortunately, the narratives of women candidates covered later in this report will reveal that the Electoral Code of Conduct was not respected and did not serve to level the playing field.

## 5. THE 2011 POLITICAL PARTIES ACT

The Political Parties Act provides for the registration, regulation, and overall management of political parties. Significantly, the Constitution envisages that political parties are required to respect the right of all persons, including minorities and marginalized groups, to participate in the political process and promote human rights and fundamental freedoms and gender

<sup>24</sup> Section 6(k) Electoral Code of Conduct, Schedule Two, Elections Act 2011

<sup>25</sup> Sections 7, 8 & 9 Electoral Code of Conduct, Schedule Two, Elections Act 2011

equality and equity. FIDA Kenya reviewed the Act to establish whether the constitutional requirements were taken into consideration in seeking to address the historical realities that have meant that politics in Kenya has remained a largely male domain.

The Act contains a number of provisions aimed at protecting women and promoting their participation with the expectation of its implementation by political parties. These provisions provide clear opportunities to enhance the participation of women in politics and the electoral process and bridge the gender gap. The provisions include:

- ✓ The members recruited by political parties must reflect regional and ethnic diversity, gender balance, and the representation of minorities and marginalized groups.
- ✓ The composition of parties' governing boards must reflect regional and ethnic diversity, gender balance, and representation of minorities and marginalized groups. Both genders must take part in the management of political parties, such that not more than two-thirds of the members of a party's governing body should be of the same gender.
- ✓ As a requirement for full registration and for receiving the political parties' fund, a party's governing body must satisfy the two-thirds principle of representation in its membership and governing body.
- ✓ Requires parties to set aside 30 percent of the political parties' fund for promoting the representation in Parliament and in the County Assemblies of women, persons with disabilities, youth, ethnic and other minorities, and marginalized communities.
- ✓ The Code of Conduct under the act directs parties to respect and promote gender equity and equality, human rights, and fundamental freedoms, as well as practice tolerance and inclusive political activities.
- ✓ The office of the Registrar of Political Parties can deregister parties that fail to meet gender requirements, do not promote free and fair nominations, and do not respect national values, which include equality and inclusiveness.
- ✓ The establishment of the Political Parties' Liaison Committee (PPLC) to facilitate coordination between the political parties, IEBC, and the Registrar of Political Parties for smooth flow of mandates.
- ✓ The establishment of the Political Parties' Disputes Tribunal, which provides an impartial platform to address grievances that women may encounter as they pursue engagement in political parties.
- ✓ The act provides for the registration and management of parties, defining certain criteria to remain registered. The structured management of political parties increases the need for adoption and application of rules and regulations, which, in turn, offers opportunities to include measures to address the inclusion of women in political life.
- ✓ The Code of Conduct guides relations and, among other things, prohibits abuse of women members.



**Assessment of the Political Parties Act :** While the Act contains the mentioned gender-responsive provisions, it did not succeed in significantly expanding the space for women's participation in politics for various reasons.

First, implementation of the Act was very half-hearted with political parties implementing only those mandatory provisions, and even then, instances of circumvention were many. For instance, it was widely reported and documented that the membership lists of political parties were fraught with fraud with parties failing to conduct genuine registration of members and, instead, lifting names of the unknowing public from various public records. As a result, the very key constitutional provision of political party inclusion of women was defeated.

Furthermore, even in the governing bodies, parties took on a very minimalistic approach by ensuring that women did not benefit from the influential positions of party leadership, but were relegated to peripheral roles in the governing bodies. Since membership and governance represent the very basic units of a political party, the compromise on these two aspects completely undermines a party's ability to be gender-responsive.

Second, the Act merely restated those requirements stipulated in the Constitution, but failed to enact other progressive and positive measures. The Act could have provided more specific and precise measures for the parties to put in place. For instance, instead of merely requiring parties to observe gender equality, more substantive provisions could have been defined, such as:

- ✓ Guidelines for achieving the two-thirds principle through political party interventions, including nomination rules that incorporate affirmative action measures by requiring a certain proportion of contested seats to be set aside for women, particularly in areas where the party is popular.
- ✓ While the Act requires records of political parties to include copies of the policies and plans of the political party, the Act missed the opportunity to require parties to prepare and provide an affirmative action policy.

Third, the provisions related to the Political Parties' Disputes Tribunal requires one to have exhausted internal political party dispute resolution mechanisms before bringing a case to the Tribunal. The Political Party Act failed to define any regulations for these internal dispute resolution mechanisms; and even worse, the party leadership was quite likely to be the offending party, thus making the solution self-defeating.

## 6. NATIONAL COHESION & INTEGRATION ACT

The National Cohesion and Integration Act was designed to encourage national cohesion and integration by outlawing discrimination on ethnic grounds. It was also designed to provide for the establishment, powers, and functions of the National Cohesion and Integration Commission. The object and purpose of the Commission is to facilitate and promote equality of opportunity, good relations, harmony, and peaceful co-existence between persons of the different ethnic and racial communities of Kenya and to advise the Government on all aspects thereof. The Act was informed by the post-election violence of 2007. The Commission was put in place to diffuse ethnic tensions and nepotism, which had previously resulted in violence



and corruption.

**Assessment of the National Cohesion and Integration Act :** One of the most important provisions of the Act is the definition of the offence of 'hate speech.'<sup>26</sup> Hate speech is defined as the use or distribution of threatening, abusive, or insulting words, actions, or behavior with the intention or likelihood to stir up ethnic hatred. Hate speech is most common during pre-electoral periods and is part of the arsenal of tricks, together with intimidation and use of abusive language, which opponents use to discredit women candidates. For instance, women who do not share the ethnicity of their spouses have been particularly vulnerable to hate speech from their opponents, and they complained of the same in the run up to the 2013 elections. This electoral period also saw new trends of heightened instances of hate speech through social media platforms. The Nairobi-based online monitoring group, Umati, logged 5,683 posts containing hate speech on social media between October 2012 and May 2013. A quarter of those contained calls to kill, beat, or forcefully evict one or more members of various ethnic groups.<sup>27</sup>

On its part, the Commission reported great efforts, such as the deployment of 400 observers to every constituency across the country for purposes of monitoring hate speech and incitement of inter-ethnic conflict. Despite the reported effort and prevalent incidents of hate speech, there have been only a handful of prosecutions to date, leading to the public criticism of the Commission for failing in its key mandate.

## 7. PROTECTION & SECURITY-RELATED LEGISLATION

In addition to electoral laws, there are several other integral pieces of legislation that serve to create an enabling legal environment for the conduct of peaceful and fair elections. These key laws are discussed below as they relate to additional protections for women as they pursue their civic and political rights.

### The 2006 Sexual Offences Act

The Sexual Offences Act is one of the most gender-responsive pieces of legislation set up to increase protections against sexual violence in Kenya. The Act incorporates all forms of sexual violations, as well as introducing very progressive provisions in the deterrence and management of sexual offences in Kenya. Some of these progressive provisions include:

- ✓ Enhanced definitions of sexual offences, including rape, attempted rape, gang rape, sexual assault, indecent acts, defilement, attempted defilement, sexual harassment, child trafficking/sex tourism, and child prostitution/pornography.
- ✓ Enhanced perpetrator accountability through provision of minimum sentences for serious offences.
- ✓ Less strict requirements for corroboration of testimony owing to the very clandestine nature of sexual offences.

<sup>26</sup> Section 13, National Cohesion and Integration Act, 2008

<sup>27</sup> See <http://africajournalismtheworld.com/tag/kenya-election-and-media/>

- ✓ Provisions for psychosocial support.
- ✓ Arrangements for witness protection.

Elections and violence in Kenya have shared an unholy alliance since time immemorial. Women are disproportionately affected by violence, and they especially bear the brunt of sexual violence, which serves to discourage them from participating in elections as candidates, supporters, and voters. Therefore, the Act provides great protection and creates an enabling environment for women to engage in elections and politics. The only drawback to be noted is with regard to implementation. The post-election violence of 2007 occurred during the reign of this Act, yet very few prosecutions have been initiated to date despite the thousands of reported sexual offences. While the Act is progressive, only its strict application will guarantee women protection from sexual violence.

### **The 2011 National Police Service Act**

The National Police Service Act lays down the composition, functions, and powers of the National Police Service. The Act is gender-responsive in terms of its composition:

- ✓ The composition of the service shall, so far as is reasonably practicable, uphold the principle that not more than two-thirds of the appointments shall be of the same gender.
- ✓ The recruitment of the Inspector General and Deputy Inspectors General shall ensure that, at all times, one of the three positions of the Inspector General and the two Deputy Inspector Generals is of the opposite gender. Currently, one of the Deputy Inspector Generals is a woman, although it must be noted that there were unsuccessful attempts by the 10<sup>th</sup> Parliament to subvert this requirement through an amendment to the Act.

These provisions create opportunities for women in the service and ensure that women are represented both in the decision-making and implementing arms of the service. The inclusive nature of the service is reflective of the Kenyan face, and it is envisaged that it will likely lead to a more gender-responsive security sector.

### **The Penal Code**

The Penal Code is designed to establish a code of criminal law in Kenya.

Election times often result in increased crime and levels of insecurity. The significance of the Penal Code is that, aside from electoral offences, there are many other crimes committed that serve to subvert a peaceful and conducive environment. As has been stated before, volatile situations disproportionately affect women and usually serve to discourage or hamper their participation as candidates, supporters, and voters.

Therefore, the Penal Code provides a means through which the security and prosecutorial arms can maintain a peaceful and orderly environment during elections and, in so doing, offer a conducive environment for women's participation.

## 8. POLICY FRAMEWORK

Policies are crucial in interpreting a government's principles and priorities. Therefore, it is important to analyse the gender responsiveness of select policies in order to further illustrate the structural opportunities and gaps that existed as a backdrop to the 2013 elections.

### Gender Policy

The most recent Gender Policy was developed in July 2011 by the then Ministry of Gender Children and Social Development. It was noted that, despite women's essential productive and reproductive roles, they still have significantly less access than men to resources, assets, knowledge, community management, and decision-making—hence, the need for a gender policy.

The policy framework was developed with an overall goal of mainstreaming gender concerns in the development process in Kenya in order to improve the social, legal, economic, and cultural conditions for women, men, girls, and boys. The objectives of the Policy include promoting equity and equality of women and men throughout their life cycle and ensuring that interventions do not promote inequitable gender roles and relations.

Strategies that are provided for by the Policy include:

- ✓ Strengthening the institutional procedures that ensure that the needs of women, men, girls, and boys are all met equitably with a view to assuring vulnerability reduction in all sectors;
- ✓ Formulating measures to ensure that gender-specific vulnerabilities and capacities of men and women are systematically identified and addressed.

In this regard, the Policy outlines initiatives that relate specifically to women:

- ✓ Adolescent reproductive health
- ✓ Gender and education policy (2007)
- ✓ Presidential directive on affirmative action
- ✓ National policy for the abandonment of female genital mutilation (FGM)
- ✓ Creation of the women's enterprise fund intended to ensure women have access to credit, build the entrepreneurial skills of women, and coordinate the implementation of the fund

The Policy also incorporates various principles for enhancing women's status:

- ✓ Women's rights are human rights
- ✓ Equity in treatment of women, girls, men, and boys, as well as equal opportunities to access national resources
- ✓ Recognition of the specificity of women, men, girls, and boys in order to promote and protect fairness in the treatment of different categories of women, noting that they are not homogeneous and their circumstances vary

- ✓ Promoting economic empowerment for women
- ✓ Developing affirmative action interventions targeting women as a corrective measure to equalize opportunities and access
- ✓ Recognition that inequitable gender relations cannot be addressed by focusing on women in isolation
- ✓ The creation of an enabling environment for women and men, which is gender-sensitive and gender-responsive, in order to meet the specific gender needs of women and men
- ✓ Endeavoring to provide facilities and provisions in recognition of gender-specific needs

The Policy focuses on the practical needs, opportunities, constraints, and strategic interests of both women and men from the local, national, regional, and international contexts in which they live. In this regard, the policy forms a suitable overarching framework toward supporting the enhancement of women's participation, including in the arena of elections and politics.

### **The Kenya National Youth Policy**

In the past, no recognition was given to the needs and concerns of young men and women who were, instead, left to find their own way in a difficult and evolving society. Thus, the National Youth Policy was designed to recognize the needs and concerns of young women and men.

The Policy attempts to address issues affecting young people to enable them to reach their maximum potential. The Policy envisions a society where youth have the same opportunities as other citizens to realize their fullest potential, productively participating in economic, social, political, cultural, and religious life without fear or favour.

The National Youth Policy may be said to be gender-responsive owing to the following provisions:

- ✓ The Policy recognizes that, among the 9.1 million youth, 51.7 percent are female youth.
- ✓ The Policy has priority target groups, and female youth are among the special categories.
- ✓ The key principles of the Policy include equity and accessibility; gender inclusiveness; good governance; and mainstreaming youth issues.

The Policy represents an important milestone not only for young women and men, but also for the country as a whole. The aspirations, needs, and conditions of young women and men have been formally recognized and articulated well in the policy.

### **Vision 2030**

Vision 2030 represents the country's development programme from 2008 to 2030 and its aim is to transform Kenya into a middle income country. The Vision is based on three pillars: economic, social and political. It is being implemented in successive five-year, medium-term plans (e.g., 2008-2012; 2012-2017; 2017-2021; 2021-2025; 2025-2030).

Vision 2030 includes various principles related to the inclusion of women:

- ✓ Equality of citizens: Kenya shall be a nation that treats its women and men equally. It will not discriminate any citizen on the basis of gender, race, tribe, religion, or ancestral origin.
- ✓ The 2030 vision for gender, youth, and vulnerable groups is gender equity, improved livelihoods for vulnerable groups, and a responsible, globally competitive, and prosperous youth.
- ✓ The 2030 goal for equity and poverty elimination is to reduce the number of people living in poverty to a tiny proportion of the total population. Kenya aims for a society that guarantees equality of opportunity in accessing public services and providing income-generating activities as widely as possible. The goal will be achieved by placing the citizens at a level of income sufficient to cater for basic requirements of a healthy, productive life.
- ✓ Vision 2030 establishes the Women Enterprise Fund whose objective is to provide Kenyan women with access to alternative financial services in order to strengthen their voices and bargaining power in various spheres of life politics included.

**Assessment of the Policy Framework :** All the foregoing policies, though designed for both men and women as Kenyan citizens, have some provisions designed specifically for women as outlined above. Women are categorized as one of the priority target groups. Thus, the policies can be regarded as gender-responsive.

## B. INSTITUTIONAL FRAMEWORK

This section will examine the role of various institutions in elections that are mandated, or have the ability, to secure and enhance equal participation of women and men in the political environment. It will be bolstered with an analysis of the respective institution's compliance with the law, along with prescribed measures taken or omitted.

### 1. INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION (IEBC)

The Constitution establishes an Independent Electoral and Boundaries Commission (IEBC). The creation of IEBC was a welcome respite for Kenyans in light of the electoral mismanagement that culminated in the unrest witnessed during the 2007 General Elections. The formation of the IEBC was a symbol of the successful legal and electoral reforms that followed. In addition to the high expectations for IEBC to carry out a successful election in 2013, the electoral body also received a lot of public good will to successfully steer Kenyans through the pivotal 2013 elections. Women were extremely optimistic and looked forward to having IEBC as a free, fair, and gender-responsive umpire as they pursued elective and nominated seats.

The yardstick by which the IEBC will be analyzed is well articulated in the Constitution, which states that 'The Commission shall exercise its powers and perform its functions in accordance with this Constitution and national legislation.'<sup>28</sup>

28 Article 88(5), Constitution of Kenya

First, it is important to understand the constitutional mandate of the IEBC as concerns the management of elections. The mandate includes:<sup>29</sup>

- ✓ The continuous registration of citizens as voters;
- ✓ The regular revision of the voters' roll;
- ✓ The delimitation of constituencies and wards;
- ✓ The regulation of the process by which parties nominate candidates for elections;
- ✓ The settlement of electoral disputes, including disputes relating to or arising from nominations, but excluding election petitions and disputes subsequent to the declaration of election results;
- ✓ The registration of candidates for election;
- ✓ Voter education;
- ✓ The facilitation of the observation, monitoring, and evaluation of elections;
- ✓ The regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
- ✓ The development of a code of conduct for candidates and parties contesting elections; and
- ✓ The monitoring of compliance with the legislation required relating to nomination of candidates by parties.

Drawing on FIDA's observations and findings, this report will analyse IEBC's role in and performance of some of its key mandates that had a significant bearing on the participation of women in the electoral and political process.

## Election Regulations

IEBC is granted statutory authority to make regulations to facilitate the implementation of the Elections Act.<sup>30</sup> In this regard, the Commission set out to develop various Elections Regulations in 2012. In doing so, IEBC began to display its poor state of electoral preparedness. It failed to comply with the legal deadlines to have the regulations approved by Parliament six months prior to elections. As a result, the Election Act<sup>31</sup> was amended to reduce the timeframe from six to four months prior to elections.

Still, IEBC did incorporate recommendations that FIDA Kenya submitted to it, urging it to exercise its constitutionally vested ability to effect affirmative action measures by making provision for the reduction of nomination fees for women and other special interest groups. IEBC established significantly subsidized nomination fees—half of the full nomination fee—for female candidates.

29 Article 88(4), Constitution of Kenya

30 Section 109, Elections Act 2011

31 Elections (Amendment) Bill 2012

## Voter Registration

Voter registration was delayed and conducted over a very short period. The amendment to the Elections Act reduced the time within which registration must be conducted from 90 to 60 days prior to the General Election on March 4, 2013. Extra effort to reach women with registration information, as well as increased registration time, would likely have helped to increase the number of registered women. The women interviewed by FIDA cited lack of clear information on the electoral process and access to voter registration centers as key barriers to the participation of women in the electoral process.

The provisions that guide the IEBC's role on voter registration are gender-neutral in that they do not take into account any gender-specific aspects. IEBC had an opportunity to rectify this situation through the development of Elections Regulations or other guidelines in which gender-responsive provisions that impact the ability of women to register as voters could have been articulated. In this regard the voter registration failed in terms of:

- ✓ The register given to the public should have been disaggregated by gender for easy monitoring. During the registration period, stakeholders could have utilized this information for targeted registration drives to encourage women voters in the areas where their registration numbers were lower. This information would also have been useful for future analysis on registration trends among women voters.
- ✓ In light of the historical under-registration of women voters, IEBC should have made efforts either in letter or practice to effect measures that specifically targeted women voters. The methodologies that they used did not specifically target women.
- ✓ In addition, keen regard should have been focused on issues, such as security and accessibility of registration centers in rural and remote areas.

## Voter Education

According to the IEBC, the objectives of voter education include:<sup>32</sup>

- ✓ Provoking public interest in the electoral process and its involvement in the process of electing political leaders;
- ✓ Enlightening the public on the importance of voting and its impact on transparency and accountability;
- ✓ Educating the public on the electoral process, role, responsibilities, and rights of voters;
- ✓ Encouraging voter participation on the basis of national policy solutions; and
- ✓ Ensuring that voter apathy is minimized.

To these ends, IEBC developed various manuals and publications for voter education, including:

### ***A Simple Guide to Biometric Voter Education***

Produced in English and Kiswahili, the manual informs voters on: who can register

<sup>32</sup> See [www.iebc.or.ke/index.php/voter-information/voter-education](http://www.iebc.or.ke/index.php/voter-information/voter-education)



(qualifications); why they should register as voters; what BVR voter registration entails and its benefits, which include security of the details; where one can register; the information that will be captured during registration, which includes gender; the role of the voter in ensuring the register is accurate; and offences on registration. The information is presented in very simple English and Kiswahili and, therefore, was easily comprehensible to women from various educational and social backgrounds.

### ***Handbook on Elective Positions 2012***

This handbook aims to promote public understanding of the various positions under the 2010 Constitution. The manual also educates citizens on the principles upon which elections are based and emphasises equality of the vote, gender equity, and the free will of the voters, and the two-thirds gender requirement for elective positions. It states the elective positions and explains the qualifications necessary for each position. It also provides information on nominated seats that are allocated based on specified criteria. The manual also has a section on the role of citizens in the electoral process.

### ***Voter Education Curriculum***

This curriculum is a guide designed to standardize voter education for the country. The curriculum gives a guide to the teaching of various subjects. Some of the subject areas include political participation, which includes participation of women in political parties, meaning and roles of political parties, membership, and the dispute resolution mechanisms. Other subjects include: election violence; special groups, including minorities, older persons, and illiterate persons, among others. The curriculum suggests various methods to be used in voter education, including demonstrations, role plays, illustrations, TV/Radio dramas, song and dance, audio/visual recordings, banners, and road shows. Other generic methods can also be used. The suggested variety of methods was likely to assist in dissemination of information to women from different educational and social backgrounds.

### ***Voting Procedure Poster***

This poster is a graphic depiction on how voting is conducted at the polling station. It is very simple, and the pictures can be easily understood. However, only an English version existed prior to elections, and a Kiswahili version would have been beneficial to women who were not fluent in English.

***Assessment of IEBC's Voter Education Efforts:*** In light of the novel nature of the 2013 elections, the voter education exercise was bound to be a tall order. IEBC's voter education efforts fell short of expectations for the following varied reasons:

- ✓ The IEBC put all its voter education materials on its website, making it easy for a section of Civil Society Organizations (CSOs) and other stakeholders to access them. However, the ordinary citizens as the rights holders may have found it difficult to access this information when they did not have access to internet or electricity or were illiterate.
- ✓ The IEBC should also have attempted to put the information in a more compact (carry-friendly) format and ensured that all materials were also available in Kiswahili.



- ✓ Further, despite the fact that the IEBC emphasised alternative methods to be used for education, such as radio/TV drama, these materials were not on the IEBC website in a format that one could download for use, i.e., the files were either too large for downloading or information was presented on other websites, such as YouTube, without the relevant links being provided.
- ✓ Another challenge observed was that the voter education materials themselves were not sufficient for distribution to civil societies who have traditionally played a key role in voter education. Further, from observation, the electoral commission's visibility and public outreach through IEC<sup>33</sup> materials was arguably lower than in previous electoral years.

The March 4, 2013 elections were the first of their kind in Kenya in terms of breadth and complexity, coupled with new procedures and the use of technology. Kenyans were expected to fill six ballot papers across six elective positions, most of which were new and unfamiliar. The electorate was further required to contend with the use of technology by way of the electronic voter identification system. Given this tall order, IEBC should have conducted an aggressive and extremely effective voter education exercise.

Instead, FIDA Kenya observed a late start with voter education beginning only a month before the elections, making the period unsuitably short, especially bearing in mind the envisaged target (electoral units) comprised of 1,450 wards across the country. Strong and constructive partnerships with civil society organisations would have greatly enhanced voter education and increased IEBC's reach.

This indictment of IEBC is not unwarranted given that the March 4, 2013 elections recorded an unprecedented number of rejected votes. Votes were to be rejected when a voter's intention is unclear, and the number of rejected ballots was an indication of voters' lack of knowledge on the voting procedure, which, in turn, is a direct result of poor or no voter education.

## Nominations

Political party nominations or party primaries are part of a party's internal election process for the purpose of selecting candidates that will represent the party in the General Elections. The nomination exercise preceding the 2013 General Elections presented a hostile environment for women aspirants. Having observed the exercise and interviewed women candidates, FIDA Kenya noted the following key challenges:

- ✓ Violence against women candidates.
- ✓ Intimidation and use of unfair tactics by male opponents.
- ✓ Marginalization and exclusion of women at party level (e.g., irregular direct nominations, names missing from ballot papers).
- ✓ Ineffective and often non-existent dispute resolution mechanisms at party level.

As a result, women performed very poorly and lost the opportunity to be candidates, largely

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33 Information, education and communication

due to unscrupulous practices.

That the women suffered these obstacles at the hands of their political parties is not a surprise, which is why the law envisaged an arbiter: the IEBC. The Constitution, the Elections Act, and the IEBC Act give the IEBC the authority to regulate political party nominations. This power included: (1) the ability to specify days during which nominations could be conducted, which must be at least 45 days before elections; and (2) the role of monitoring compliance with the legislation relating to nomination of candidates by parties. IEBC had a responsibility to ensure that a transparent and safe nomination exercise was conducted, giving women aspirants a better chance to compete fairly. IEBC's failures in providing oversight left the nominations open to the malpractices and abuse that were witnessed.

### **Electoral Code of Conduct**

The Electoral Code of Conduct is key to establishing a level playing ground for candidates in competitive elections. While analyzing the legal framework in this report, we noted that the Code sets out provisions that generally should promote an atmosphere and culture of tolerance, courtesy, and respect—all of which would have been beneficial to women's engagement in politics.

The IEBC's responsibility was the enforcement of the Code through monitoring and imposing sanctions against offending parties. FIDA Kenya's observations and testimonials from women candidates (presented later in this report) indicate that the IEBC failed to effectively implement the Code thus rendering the electoral playing field uneven and unfair.

### **Campaign Finance**

Regulation of campaign financing is one of the globally recognised best practices in the management of elections. The objective is to ensure that, as far as possible, elections are devoid of unfair advantage, undue influence, and corruption—all of which can affect a free and fair election. Unfortunately, Kenya undertook the March 4, 2013 elections without suitable legislative or regulatory guidance on campaign financing. The 2012 Campaign Financing Bill was developed, but suffered various challenges—key among them being a crucial lack of political will to enact the legislation.

Conversely, one of the constitutional<sup>34</sup> and legislative<sup>35</sup> functions of the IEBC is the regulation of the financing of campaigns during elections, including the amount of money that may be spent by or on behalf of a candidate or party in any election. In this regard, IEBC was well within its means to draft a campaign financing regulation. Indeed, FIDA Kenya, together with the Elections Observation Group (ELOG), made this recommendation to the IEBC in a memorandum.

The impact of unregulated campaign financing on women candidates cannot be understated, especially because it further skewed the odds against women candidates since it is well

34 Article 88(4)(i), Constitution of Kenya

35 Section 109(1)(ee), Elections Act 2011

established that women in Kenya command less economic resources than their male counterparts. Irregular, and sometimes even illegal, use of funds during campaigns was observed, and the women candidates FIDA Kenya spoke to confirm that it was one of the key disadvantages with which they had to contend.

## Party Lists

Elections for the nominated seats in the National Assembly, Senate, and County Assembly are allocated on the basis of proportional representation through the use of party lists. The IEBC is mandated by the Constitution to supervise the process by which party lists are formulated and ensure compliance with the law in terms of form and timelines.

By not offering proper guidance or oversight to the political parties, IEBC did not satisfy its obligation in this regard. More significantly, IEBC was in flagrant violation of the law when it failed to publish the party lists submitted to it before the elections. Due to IEBC's omissions, a number of challenges arose. First, the composition of party lists was disputed, a situation which laws had attempted to remedy by providing for closed lists that must be published before elections as a measure of transparency and accountability. Second, the right of women to be represented through party lists was threatened, which, in and of itself, is a constitutional violation. In fact, this threat to women's representation on the lists only came to light as a result of a successful court petition<sup>36</sup> that was filed against the IEBC.

**Assessment of IEBC's Overall Fulfillment of its Mandate:** It is evident that IEBC did not fully meet the expectations of the law, best practices, or the court of public opinion. Its less-than-optimal state of electoral preparedness, coupled with violations of its mandate and non-implementation of the law, combined to create a less than favorable electoral environment for women candidates who are often already hampered by other constraints. Further, IEBC took a weak approach with regard to the promotion of gender equality, non-discrimination, and inclusion. This assertion is made bearing in mind the scores of constitutional women's gains and the wide discretion, powers, and constitutionally vested abilities that IEBC had at its disposal to enhance women's participation in electoral processes.

## 2. REGISTRAR OF POLITICAL PARTIES (RPP)

The office of the Registrar of Political Parties (RPP) is established by the Political Parties Act. The functions of the RPP include:

- ✓ Register, regulate, monitor, investigate, and supervise political parties to ensure compliance with the Political Parties Act;
- ✓ Administer the Political Parties Fund;
- ✓ Ensure publication of audited annual accounts of political parties;
- ✓ Verify and make publicly available the list of all members of political parties;

<sup>36</sup> National Gender and Equality Commission v Independent Electoral and Boundaries Commission & another [2013] eKLR, High Court of Kenya, Constitutional & Human Rights Division Petition 147 of 2013.

- ✓ Maintain a register of political parties and the symbols of the political parties;
- ✓ Ensure and verify that no person is a member of more than one political party and notify the Commission of its findings;
- ✓ Investigate complaints received under the Political Parties Act; and
- ✓ Perform such other functions as may be conferred by the Political Parties Act or any other written law.

Given these functions, the office of the RPP holds significant influence and jurisdiction over the workings of political parties, which includes ensuring gender mainstreaming within political parties as envisaged by the Constitution and the Political Parties Act. In this regard, the office of the RPP made attempts to enhance women's participation through the following:

- ✓ Ensuring that all parties seeking registration satisfied the two-thirds rule on gender representation in their membership and governance body. Preceding registration, the office of the RPP had also issued regulations guiding parties on registration requirements.
- ✓ Developing a checklist for nominations and disseminating it to political parties to guide the development of their own nomination rules and subsequent conduct of nominations. The checklist was gender-responsive and contained useful provisions, such as:
  - Promote free, fair, and peaceful elections and campaigns as provided for in Article 88 of the Constitution;
  - Guarantee free, fair, transparent, accountable, and peaceful elections;
  - Have a clear dispute resolution mechanism within the party;
  - Denounce violence or improper conduct during election and nomination processes; and
  - Make specific provisions on the two-thirds gender rule for elective and appointive positions in the party leadership and management structures.
- ✓ Engaging with political parties:
  - Through the Political Parties' Liaison Committee (PPLC) on how to enhance women's participation in parties and political processes.
  - Sensitization on development of party lists and the legal requirements for the same. For instance, some party lists must contain both genders while others must be all female.
  - In collaboration with civil society and development partners, to try to find formulas for enhancing women's representation.
- ✓ After the elections, the office of the RPP was fully involved in the development of the formula that facilitated proportional representation through allocation of nominated seats to political parties in accordance with their election wins.

**Assessment of RPP's Fulfillment of its Mandate:** While FIDA noted that the office of the RPP was instrumental in upholding some of the constitutional gains, one must take note of some of the shortcomings that were observed.

There has not been any report from the office of the RPP actually deregistering any party that violated the law, despite several publicly known reports and mentions of parties' misdemeanors. The nomination exercise was one such instance that showed clear flouting of the law and nomination rules by political parties. While IEBC had the role of regulating the nominations, the office of the RPP is not recorded as having exacted consequences against offending parties after the fact.

Similarly, no action was taken to address the claims that parties submitted fraudulent membership details at the time of their registration. In fact, the office of the RPP put in place a mechanism for members of the public to verify their membership status in political parties, which led to many discovering that they had been included as party members without their knowledge or consent. This violation is pivotal as one must, therefore, question whether parties, indeed, satisfied the gender representation rule in their membership. However, even when parties blatantly flouted the law in this instance, there were no consequences.

Therefore, one must conclude that the regulatory role of the office of the RPP was, by and large, under-utilized. A failure to deregister or impose consequences on offending parties' amounts to an accountability lapse that has further served to sanction impunity and the unfair tactics and strategies employed against women in political parties.

That said, FIDA also recognizes the challenges that faced the office of the RPP. In particular, the office is currently not established as envisaged by the Political Parties Act. It should comprise a registrar deputized by three assistant registrars. It should also be independent and not subject to the direction or control of any person or authority. The office of the RPP was not set up as per the Act due to the expiration of the legislative timeline to constitute a selection committee that would have undertaken the appointment of the registrar.

As a result, the office of the RPP lacked sufficient human and financial resources, independence from IEBC, and legal authority to exercise its mandate. The sheer number of political parties that the office of the RPP had to serve further challenged its capacity. The Registrar was expected to give policy guidance, conduct oversight, and implement the law across more than 50 parties, which obviously proved to be a stretch.

### 3. POLITICAL PARTIES

In every section of this report, there is extensive discussion of the role of political parties in enhancing or impeding women's participation in electoral and political processes. For ease of reference, this section consolidates FIDA's findings on the overall performance of political parties by documenting the key gains and omissions based on our observations and findings.

On the whole, political parties retained their traditional role serving as bastions of patriarchy and subjugation of women. While it is admitted that some constitutional and legislative gains for women were upheld, it was typically where the provisions of the law were explicit, but

even then the gains were often abrogated. Where the law was not explicit, the gains for women were minimal, and political parties neglected or refused to take measures to promote women candidates. In this regard, FIDA Kenya recorded a number of specific measures that directly or indirectly hampered women's participation in political processes:

- ✓ Submission of fraudulent membership details, leading to uncertainty about the actual gender representation of political parties' membership.
- ✓ Relegation of women—even if complying with the two-thirds rule—in governing bodies to peripheral positions in the national executive councils of political parties, rather than influential positions, like chairperson or secretary general.
- ✓ Development of party documents, such as constitutions and nomination rules, that did not provide for specific affirmative action measures for increased women's participation.
- ✓ Failure of most of the parties to require gender parity in the composition of their dispute resolution bodies.
- ✓ Failure of political parties to proactively attempt to realize the two-thirds principle by setting aside nominations to elective seats for women in their strongholds. Political party nomination processes fraught with violations and unscrupulous practices against women candidates, including intimidation and use of unfair tactics by male opponents; marginalization and exclusion of women at party level (e.g., irregular direct nominations, names missing from ballot papers); and ineffective or non-existent dispute resolution mechanisms at the party level.

#### **4. THE JUDICIARY – CASE WATCH**

In the context of the 2013 elections, the judiciary had a crucial part to play in clarifying the law, as well as resolving various disputes brought to it. In this section, FIDA Kenya will analyse the role of the judiciary in two pivotal cases that had a direct bearing on the participation of women in electoral and political processes.

##### **Implementation of the Two-Thirds Gender Principle: Supreme Court Advisory Opinion**

###### ***Background***

The Constitution requires that elective bodies comprise not more than two-thirds of either gender. However, there was no clear mechanism or provision for the realization of this rule in the Senate and the National Assembly. The main challenge was the actual impossibility of realizing the two-thirds principle without an amendment to the existing constitutional or legislative framework. In an attempt to resolve the legal lacuna, a Constitution of Kenya Amendment (2011) Bill had been developed. It was presented for a first reading in Parliament, but never progressed further due to a critical lack of political will. As a result, popular rhetoric emerged, claiming that a constitutional crisis was looming after the March 4 General Elections. The reasoning behind this rhetoric was that it was assumed the electorate would certainly not elect at least one-third of women to the Senate and National Assembly, thus resulting in an improperly

constituted and unconstitutional parliament. At the same time, a destructive and retrogressive public narrative also emerged, arguing that the two-thirds principle was progressive in nature and, therefore, not meant for realisation during the 2013 elections.

### ***Request for advisory opinion***

In the midst of this public debate in October 2012, the Attorney General (AG) filed a Request for Advisory Opinion<sup>37</sup> at the Supreme Court of Kenya. The question put to the bench was whether the two-thirds requirement, read with the non-discrimination provision in Article 27 and provisions relating to the composition of the National Assembly and Senate, required immediate or progressive realization and, specifically, whether it was applicable to the March 4, 2013 elections.

The AG's request was drafted in a very subjective manner with the AG basically asking the Supreme Court to confirm that the two-thirds principle was progressive in nature. Some of the following arguments put forward by the AG illustrate this point:

*THAT it is clear that the intent of the two drafts was to introduce affirmative action through programmes and policies designed to redress any disadvantage suffered by an individual or groups as a result of past discrimination and not through elective or appointive posts.*

The AG refers here to the previous constitutional **drafts** (i.e., Wako draft and Harmonized draft). This argument is irrelevant as the content of previous drafts has no legal force, and Kenya has only one supreme Constitution. Further, the Constitution was only promulgated after being subject of a referendum and, therefore, represents the will of the people.

*THAT there is therefore an ambiguity in the Constitution of Kenya 2010 as a result of **Article 81(b)**.*

Article 81(b) states that the electoral system **shall** comply with the following principles – not more than two-thirds of the members of elective public bodies shall be of the same gender. By basic rules of statutory interpretation, the use of the word “shall” denotes the legislation's intention to make a provision mandatory as opposed to discretionary. Therefore, this provision is quite express in its meaning and does not present ambiguity.

There were several other misrepresentations in the AG's request that indicate that the predominant motive for the Request for Advisory Opinion was to assist the State in not complying with its obligations under Article 81(b) of the Constitution.

FIDA Kenya, other civil society groups, and national commissions, such as the Commission on the Implementation of the Constitution and the National Gender and Equality Commission, joined the case as amicus curiae (friends of the court) and interested parties. FIDA Kenya made submissions to the court arguing for immediate implementation of the two-thirds principle.

### ***Judgment***

In December 2012 and through a majority opinion, the Supreme Court found that the two-thirds principle had '*not been transformed into a full right ... capable of direct enforcement.*' It

<sup>37</sup> Supreme Court, Advisory Opinion No. 2 of 2012



noted that, for Article 81(b) to be transformed from a principle into a right, either the provisions relating to the National Assembly and Senate would have to be amended or other legislative measures would have to be implemented as envisioned by Article 27(8). As such, the Court opined that progressive implementation was the right course. In the same ruling, the Court did prescribe a timeline for implementation, calling on Parliament to take the necessary legislative measures by August 27, 2015.

In its opinion, the Supreme Court effectively defeated the realization of the two-thirds principle at the National Assembly and Senate for purposes of the 2013 elections. In fact, the opinion may be cited as the most momentous setback recorded in the implementation of the Constitution and the efforts to increase women's representation.

The Advisory Opinion fortunately did not apply to the County Assemblies, where the principle was subsequently actualized because of more explicit instructions on the modality of implementation contained in the Constitution. Further, the opinion only relates to *elective*, not appointive, positions. Thus, it is still extremely important to continue monitoring the application of the two-thirds principle for appointive positions and ensure that the opinion is not applied at that level.

### ***Dissenting opinion***

The Advisory Opinion was a majority opinion, but not a unanimous one. Chief Justice Dr. Willy Mutunga offered a dissenting opinion. FIDA Kenya lauds the opinion for various reasons:

- ✓ Coming from the President of the Supreme Court, the dissenting opinion served as important validation and encouragement to carry on with the struggle for women's rights despite reversals, such as the majority opinion.
- ✓ It corroborated the arguments that FIDA Kenya and other stakeholders had made all along, stating that two-thirds principle was for immediate realization.
- ✓ It respected the constitutional provision<sup>38</sup> that guides courts in applying rights: to develop the law to the extent that it does not give effect to a right or fundamental freedom; to adopt the interpretation that most favours the enforcement of a right; and, to promote the values of equality and equity.
- ✓ While the dissenting opinion is of persuasive, rather than binding, authority, it has contributed to the scarce bank of progressive and gender-responsive Kenyan jurisprudence. It will be useful for future instances of constitutional interpretation, academic discourse, and advocacy efforts.

In his dissenting opinion—and as all jurists should—the Chief Justice recognized the context as is well articulated below:

*It is true the constitution will present the courts with inconsistencies, grey areas, contradictions, vagueness, bad grammar and syntax, legal jargon, all hallmarks of a negotiated document that took decades to complete. It reflects contested terrains, vested interests that are sought to be harmonized, and a status quo to be mitigated. These fea-*

38 Article 20(3) and (4), Constitution of Kenya



*tures in our constitution should not surprise anybody, not the bench, or the bar or the academia. What cannot be denied, however, is we have a working formula, approach and guidelines to unravel these problems as we interpret the constitution.*

## **Implementation of Party Lists: High Court Petition**

### ***Background***

The Kenyan election system now incorporates proportional representation by nomination through the use of party lists. The Constitution provides that all nominated seats in Parliament and in the County Assemblies be allocated to political parties in proportion to the total number of seats won by the political party at the General Election. A critical element of a party list is that it should alternate between male and female candidates, which is a requirement envisaged by the Constitution and reiterated in the Elections Act, Elections Regulations and internal political party governing documents.

After the elections, it emerged that political parties had submitted to the IEBC party lists that did not comply with the law. Nonetheless, IEBC accepted those lists. In doing so, IEBC was in breach of its constitutional and statutory duty to supervise the compilation of lists and reject unlawful lists. Moreover, IEBC had a duty to publish the lists in two national newspapers prior to elections, which it failed to do, thereby preventing public scrutiny of the lists in advance of the elections.

In seeking to secure nomination of special interest groups through proper application of the law, in March 2013 the National Gender and Equality Commission (NGEC) commenced proceedings against the IEBC.<sup>39</sup> FIDA Kenya joined the proceedings as an interested party, seeking to present to the court the impact of IEBC's actions on Kenyan women, which formed part of the subject of NGEC's claim.

In its submissions, FIDA Kenya argued that the right of women to be represented in the National Assembly, Senate, and County Assemblies through nomination on political party lists was threatened due to the alleged failure of the IEBC to discharge its responsibility.

### ***Summary of the Court's judgment***

The High Court found that the IEBC failed to meet its obligation to conduct and supervise the conduct of the election for special seats under Article 90 of the Constitution by:

- ✓ Not publicizing party lists submitted to it; and
- ✓ Not issuing sufficient guidelines consistent with its obligation to observe, respect, protect, promote, and fulfil the rights of vulnerable and marginalized people to participate in the political process.

As a result of these findings, in April 2013, the court made its judgment and ordered IEBC to do the following:

<sup>39</sup> Petition No. 147 of 2013, National Gender and Equality Commission v. Independent Electoral and Boundaries Commission

- ✓ Publish party lists submitted with regard to County Assembly seats within five days in at least two newspapers;
- ✓ Put in place a dispute resolution mechanism to handle any disputes relating to the published lists;
- ✓ Resolve any disputes submitted to the dispute resolution mechanism within seven days of the publication of the lists;
- ✓ Gazette final lists within seven days after disputes have been concluded; and,
- ✓ Put in place a policy to ensure the participation of persons with disability, youth, and women in elections.

The High Court judgment resulted in the nomination of women to the County Assemblies. However, it must be noted that the Gazettement of the nominees was much delayed by IEBC and published in July 2013 months after the sitting of the elected members of county assembly. This meant that the county assemblies continued running while improperly constituted; speakers were nominated and committees established. This has served to severely hamper women's participation in assemblies as may be evidenced by their underrepresentation in key positions within the assembly.

On a positive note, the judgment will in addition have a long-term impact given the court order for IEBC to develop a policy to ensure the participation of women, youth, and persons with disability in elections. In this instance, the judiciary played an important role in protecting women's gains.

## 5. NATIONAL GENDER AND EQUALITY COMMISSION

The National Gender and Equality Commission (NGEC) is a constitutional independent commission established pursuant to Article 59(4) and (5) of the Constitution of Kenya. The functions of the NGEC are prescribed by the National Gender and Equality Commission Act 2011. They can be summed up as the role to: coordinate, audit, monitor, facilitate, and advise as relates to the promotion of gender equality, inclusiveness, and protection from discrimination in accordance with the Constitution.

With regard to elections, the NGEC played a key role in promoting the participation of women, as well as youth, persons with disability, and minority and marginalized groups. NGEC's most notable role related to the creation of an enabling legal environment to promote gender equality:

- ✓ NGEC commenced a constitutional petition against the IEBC on party and nomination lists seeking compliance with the two-thirds gender rule in County Assemblies. The petition was successful and, when women were nominated to the County Assemblies, resulted in the upholding of a key constitutional gain.
- ✓ NGEC made submissions in the case on the Supreme Court Advisory Opinion, arguing in favour of immediate realization of the two-thirds rule of gender representation in elective bodies. Because NGEC is a noteworthy authority as a constitutional commission man-

dated to promote gender equality, NGEC's position in the case stands as a powerful rebuke to the Supreme Court's decision.

In the run up to the elections, the NGEC also mounted an advocacy campaign across various parts of the country with the objective of promoting women's leadership.

## 6. NATIONAL POLICE SERVICE

The role of the National Police Service is discussed here with regard to its role in promoting electoral security. The Police has a clear legal and constitutional duty to ensure the safety and protection of women candidates, voters, and campaigners during the electoral process. Among the rights and freedoms to be protected include right to life, freedom and security of the person, freedom of assembly, and freedom of movement. Promotion of these rights and freedoms, together with increased protections from violence, encourages women's participation in political and electoral processes.

Prior to the elections, there was little confidence in the police's ability to handle electoral security. These fears were borne of the police's past disconcerting history in handling electoral violence, coupled with sluggish and delayed police reforms. The police also did not have, or they failed to share, election security plans. Further, the security situation in the country had taken a turn for the worse with repeated incidents of violence, particularly at the Coast region.

The pre-election security environment was also compromised, mostly due to police inaction in those places where electoral offences were reported. These offences included the use of violence; intimidation; use of hate speech; campaigning using language that is threatening, abusive or insulting; and, vote buying/bribery. Women candidates that FIDA Kenya spoke to complained of having been victims to at least one of these offences, yet of not having received any effective assistance from the National Police Service. Further, while police was recorded as largely present during the political party nominations, it obviously did not serve as a deterrent to the incidences of violence and chaos that erupted.

Despite this gloomy picture, police presence was visible right before, during, and after election day, providing levels of security conducive to polling and the participation of women in election activities. Effective police responses were also recorded in known hotspots, such as the Coast region. Compared to previous elections, the 2013 elections were marked by fewer incidents of violence against women and violence in general based on observation and monitoring reports, media reports, and the experiences of women candidates.

In the past, sexual and gender-based violence, or the threat of such violence, had been one of the key obstacles to women's participation in elections and politics. On the whole, enormous credit must be given to the 'hardly any' reports of sexual or gender-based violence (SGBV) against women. FIDA Kenya, along with other organisations that hosted gender hotlines, did not receive any reports of rape before, during, or after the elections. Furthermore, the Criminal Investigations Department (CID) Headquarters established a Gender-Based Violence (GBV) Standby Team, which reached out to various organisations, including FIDA Kenya, to inform them of its existence and role and to offer support in receiving and investigating any

cases of SGBV.

The recorded and observed commendable efforts by the Police Service will certainly serve to encourage the future participation of women in electoral processes both as candidates, supporters, and voters.

## 7. CIVIL SOCIETY

Civil society organisations (CSOs) play an integral part in the protection of human rights, as well as the promotion of democracy and good governance, in Kenya. In fact, the struggle for constitutional reform and the eventual passage of the current Constitution is due largely to the decades-long efforts of CSOs.

CSOs have a significant role to play in ensuring the enhanced participation of women in elections; and, they were involved in the following interventions prior, during, and after the elections:

- ✓ Electoral reform through participation in development of legislation
- ✓ Civic education and awareness creation about women's rights
- ✓ Voter education
- ✓ Promotion of women's leadership through legal, political, and social advocacy
- ✓ Institutional strengthening, as well as monitoring compliance of duty bearers, such as IEBC, RPP, and political parties
- ✓ Capacity-building programs for women aspirants, candidates, party officials, and elected women
- ✓ Promotion of peace, as well as setting up early warning and reporting mechanisms

In this report, FIDA Kenya analyses two specific CSO platforms and the role they played in enhancing women's participation in elections and political processes.

### Women's Movement – National Women's Steering Committee (NWSC)

The National Women's Steering Committee (NWSC) is currently the *de facto* platform through which women's rights organisations in Kenya interact in an effort to protect constitutional women's gains and enhance women's participation in leadership. The NWSC came about after the promulgation of the Constitution with the aim of speaking in unison, particularly as regards faithful interpretation of the Constitution for the benefit of women in Kenya. The NWSC is convened by the Women's Political Alliance-Kenya, the Caucus for Women's Leadership, and Maendeleo ya Wanawake. FIDA Kenya is an active member, and the platform boasts a large membership base<sup>40</sup> that continues to grow. The NWSC also works closely with like-minded

40 Including, but not limited to: FIDA Kenya, CREAM, WILDAF, Coalition on Violence Against Women (COVAW), Christian Partners in Development Agency (CPDA), Community Advocacy and Awareness Trust (CRAWN), KEFSHA, Kimbilio Trust, Social Reform Centre (SOREC), the League of Kenya Women Voters (LKWV), Young Women Leadership Institute (YWLI), Youth Agenda, Kangemi Women's Empowerment Centre, Foundation of Women's Rights in Kenya (FWRK), Womankind - Kenya, GROOTS Kenya, African Women and Child Features (AWCFS), GEM, League of Muslim Women, AOCASP-UNGASS, UDPK, Women's Empowerment Link (WEL), and COREMOG-Turkana.

partners, such as the NGECC, women parliamentarians, and development partners.

The NWSC works mainly through advocacy, lobbying, public and consultative forums, and media engagement. To promote women's participation in the 2013 electoral and political processes, the NWSC undertook various interventions. The most pivotal role was its search for an appropriate and workable mechanism to secure the two-thirds principle of gender representation. All the mechanisms that were proposed, though having worked in other parts of the world, were rejected by the Kenyan policymakers, including the Cabinet, Parliamentarians, and the Commission for the Implementation of the Constitution (CIC). Regrettably, none of those who opposed the proposed mechanisms came up with alternative mechanisms, thus necessitating the formulation of the Constitution of Kenya (Amendment) Bill 2011, which also failed to pass owing to a critical lack of political will.

The NWSC was also involved in working with political parties to increase the number of women candidates; monitoring of nominations and their effect on women's participation; promotion of women's leadership; and, media engagement geared at increasing women's participation or highlighting threats to the same.

The NWSC should be congratulated for providing a platform that brought together multi-faceted women's rights organisations with a unity of purpose to enhance women's participation in elections and political processes. However, despite all the efforts that the women's movement took, there is consensus that the constitutional women's gains were not upheld because of a lack of adherence to the basic principles of equal participation.

### **Elections Observation Group (ELOG)**

The Elections Observation Group (ELOG) Kenya is established as a long-term and permanent national platform for civil societies, faith-based organizations, and other key stakeholders interested in promoting citizen participation in the electoral processes through non-partisan, impartial domestic observation and objective reporting of elections and referenda in Kenya.<sup>41</sup> The member organisations are:

1. Catholic Justice and Peace Commission (CJPC)
2. Centre for Governance and Development (CGD)
3. Consortium for Empowerment and Development of Marginalized Community (CEDMAC)
4. Constitution and Reform Education Consortium (CRECO)
5. Ecumenical Centre for Justice and Peace (ECIP)
6. Federation of Women Lawyers (FIDA) Kenya
7. Institute for Education in Democracy (IED)
8. Supreme Council of Kenya Muslims (SUPKEM)
9. United Disabled Peoples of Kenya (UDPK)

<sup>41</sup> See <http://www.elog.or.ke/index.php/about>

## 10. Youth Agenda (YAA)

ELOG's main interventions included thematic long-term observation of the electoral process, Election Day observation, and the Parallel Vote Tabulation (PVT). Through these programs, ELOG endeavored to be gender-responsive:

- ✓ One of ELOG's main observation themes included representation and participation of special interest groups, including women.
- ✓ ELOG's observer recruitment policy respected the two-thirds principle of gender representation.
- ✓ ELOG's data collection tools, such as observation checklists, took into account information particular to women and other special groups, such as youth and persons with disabilities.
- ✓ ELOG also submitted various observations reports and recommendations that highlighted various aspects of the electoral environment that were a threat to women's effective participation in elections.

In its report<sup>42</sup> of the 2013 elections, ELOG offered the following concluding observation:

*...in contrast to earlier elections, we note that, while there was remarkable improvement in conditions that would enhance the participation of women, these improvements were too little to result in significant changes...*

## 8. MEDIA

The media plays a key and influential role in the political, social, and economic sphere of a country. This audit seeks to evaluate whether the media used its prominent platform to enhance or impede women's participation in elections and politics. FIDA Kenya observed moderate positive aspects that served to profile women's leadership, such as the profiling of women aspirants/candidates and of gender issues through features in newspapers, as well as in TV talk shows.

However, in the grand scheme of things, the Kenyan media underutilized its valuable role in propelling women into politics. It is our observation that women candidates arguably received less election media coverage than their male counterparts and less coverage promoting women's leadership.

Studies worldwide reveal that women are grossly underrepresented in news coverage when compared to men. "Only 24% of the people heard or read about in print, radio and television news are female. In contrast, 76% - more than 3 out of 4 - of the people in the news are male."<sup>43</sup> The outcome of underrepresentation is an imbalanced picture of the world, one in which women are largely absent.

Closer to home, media abdicated its role in promoting social justice, including the promotion

<sup>42</sup> The Historic Vote, Report of the Elections Observation Group on the 2013 General Elections, p.48

<sup>43</sup> Global Media Monitoring Report 2010. See [http://www.whomakesthenews.org/images/reports\\_2010/highlights/highlights\\_en.pdf](http://www.whomakesthenews.org/images/reports_2010/highlights/highlights_en.pdf)

of equal participation of all in society. The AU report noted that the media also gave coverage of female candidates a relatively lower priority contrary to the Code of Conduct.<sup>44</sup> Again, lack of adequate financial resources for women candidates affected women's ability to pay for their own advertisements.

An elections media forum<sup>45</sup> featured the following question, 'Has the news media contributed in mobilizing Kenyan women to take up political leadership positions?' Commissioner Catherine Mumma of the Commission on the Implementation of the Constitution (CIC) said:

*...we have a socialization, our culture that traditionally views the woman as the background player and not a frontrunner... So you need to have that trigger that will assist them [women], has the media been that trigger? In my view, not as much, the media has reported on gender equality issues but as a reaction...I have seen a coverage of gender issues that is not proactive.*<sup>46</sup>

Indeed, FIDA Kenya had hoped for a proactive and concerted effort by the media. In light of their historical disadvantage and injustice, FIDA Kenya expected women candidates to be given a fair advantage by granting them increased/discounted coverage.

In conclusion, while FIDA Kenya recognizes the progressive steps taken by the media so far, it urges the industry to borrow a leaf from the Constitution, which advises the taking of "measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination."<sup>47</sup>

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44 AU report

45 Media and women leadership in Kenya, Media Focus on Africa, 30th October 2012

46 See <http://www.youtube.com/watch?v=iCV3vDhnYu4&list=PLt9pRxe4vs8ugeAzV6EkntcKG5z7Bo8KF&index=13>

47 Article 27(6), Constitution of Kenya

## CHAPTER THREE

# Scorecard: An Analysis of the 2013 Elections Outcome

In chapters one and two, this audit assessed the electoral environment, highlighting constitutional women's gains that were actualized and identifying the legal and institutional shortcomings, as well as key setbacks and hurdles that women faced as they pursued their civic and political rights. This chapter assesses the reality and impact of the analysed gains and setbacks. Its analysis is supported by looking at the results of elections and statistics on women leadership. The second part of the chapter sets out the perspectives and experiences of women candidates who engaged in the 2013 election process.

## A. NUMBERS DON'T LIE: ELECTIONS RESULTS & POST-ELECTION NOMINATIONS & APPOINTMENTS

### 1. ELECTIONS RESULTS & NOMINATIONS - WOMEN REPRESENTATION

#### How many women were elected?

The table and charts below provide an illustration of the representation of women in various elective positions following the declared elections results of the March 4, 2013 General Elections.

#### Total women elected in the March 4, 2013 general elections

16 women elected out of 290 constituency Members of National Assembly

47 women out of the total 47 County Women Representatives

82 women out the total 1,450 County Assembly Ward Representatives

6 women elected out of 47 Deputy Governors

0 Governors – no woman elected

0 Senators – no woman elected



## Women Representation in Parliament

The Kenyan Parliament is currently made of the National Assembly and the Senate.

The National Assembly consists of 290 directly elected members from the 290 constituencies, 47 women members elected to represent women from each individual county, and 12 members nominated by political parties. Sixteen women were directly elected from the single-member constituencies, accounting for only 6 percent of the directly elected Members of the National Assembly, which compares to the previous 8 percent (16 women out of the 210 constituencies). Out of the 12 members to be nominated by political parties, five women were nominated. Considering that the 10<sup>th</sup> Parliament had six nominated women, the current number has fallen. Women's representation at the county level was realized by the direct election of 47 women to the National Assembly. Overall, the current National Assembly has 68 women, which translates into 19.4 percent of the total membership of the National Assembly.<sup>48</sup>

### Women representation in the National Assembly

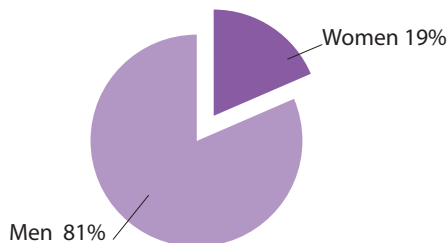
**16** women elected out of the total 290 Constituency Members of National Assembly

**47** women out of the total 47 County Women Representatives

**5** women nominated out of the total 12 seats for nomination

**68 In total**

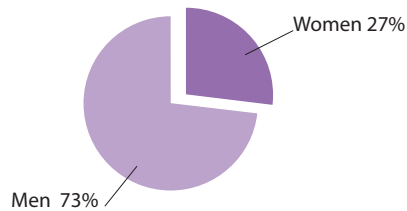
### National Assembly composition



As currently constituted, the Senate consists of 47 directly elected members from the 47 counties; 16 women members nominated from party lists in proportion to the number of seats won by each political party; and four members nominated by political parties<sup>49</sup>—two representing Persons with Disabilities (PwD), and two representing the youth. No woman was directly elected to the Senate. As such, the total number of women in the Senate is 18 as shown below, representing 27 percent of the Senate membership.

<sup>48</sup> The National Assembly comprises 350 members including the Speaker.

<sup>49</sup> It is stipulated that, of the two categories (youth and PwD), at least one member must be a woman.

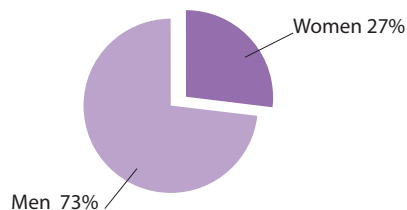
**Senate composition****Women representation in the senate**

0 Senators – no woman directly elected

16 women senators nominated out of the total 16 seats set aside for women members

2 women nominated to represent youth and persons with disabilities

**18 In total**

**Senate composition**

Generally, the figures in Parliament represent an improvement in that it is the highest number of women ever to have been elected and nominated in Kenyan history. However, considering the constitutional provisions and the legal requirements that set aside various seats for women members, as well as the selection of women to nominated seats, which was expected to lead to a more gender-responsive house, the performance still falls short. Thus, despite an enabling constitution and legislation, women endured an inordinate number of hurdles and an environment void of political will, resulting in fewer than expected women competing and winning.

**Women Representation in County Assemblies**

The Constitution provided for the creation of 47 county governments with the General Election of March 4, 2013. In all the 47 counties of Kenya, a total of 1,450 persons were directly elected as members of the respective County Assemblies. The table below provides a quick highlight on women's performance in the last general election at the ward level and following nomination of women members of county assembly.

### Women representation in the County Assemblies

**82** women out of a total of 1,450 County Assemblies Ward Representatives

**680** nominated

**762** In total

As shown above, 82 women were directly elected from among the 1,450 wards, representing only 5 per cent of the directly elected Members of the County Assemblies. However, following nominations, the percentage of women representation in the County Assemblies is now at 34%.<sup>50</sup>

### Analysis of Women's Electoral Performance

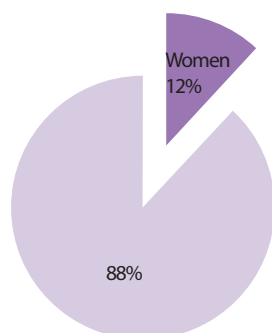
The table and charts below provide an analysis of women's performance compared to all those who contested in the General Elections for the various positions.

|              | Governor   |           |                             | Senator    |           |                             | MP          |            |                             | Members of County Assembly |             |                             |
|--------------|------------|-----------|-----------------------------|------------|-----------|-----------------------------|-------------|------------|-----------------------------|----------------------------|-------------|-----------------------------|
|              | Vying      | Elected   | % who vied and were elected | Vying      | Elected   | % who vied and were elected | Vying       | Elected    | % who vied and were elected | Vying                      | Elected     | % who vied and were elected |
| Men          | 231        | 47        | 20%                         | 227        | 47        | 21%                         | 1968        | 274        | 14%                         | 9287                       | 1359        | 15%                         |
| Women        | 6          | 0         | 0%                          | 17         | 0         | 0%                          | 129         | 16         | 12%                         | 623                        | 91          | 15%                         |
| <b>Total</b> | <b>237</b> | <b>47</b> |                             | <b>244</b> | <b>47</b> |                             | <b>2097</b> | <b>290</b> |                             | <b>9910</b>                | <b>1450</b> |                             |
| % Men        | 97%        | 100%      |                             | 93%        | 100%      |                             | 94%         | 94%        |                             | 94%                        | 94%         |                             |
| % Women      | 3%         | 0%        |                             | 7%         | 0%        |                             | 6%          | 6%         |                             | 6%                         | 6%          |                             |

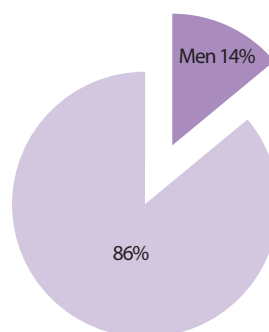
<sup>50</sup> According to the Kenya Gazette Notice Vol.CXV-No.45 of 13th March 2013 on the declaration of elected persons together with the Kenya Gazette Notice Vol.CXV-No.105 of 17th July 2013 on the declaration of members elected to County Assembly wards

Source: Independent Electoral and Boundaries Commission 2013

Overall success of women who vied



Overall success of men who vied



From the summary above, it can be concluded that:

- ✓ The success rate of women candidates who vied for elective offices in the National Assembly and the County Assemblies was very close to that of men.
- ✓ Kenyans do not appear to be averse to electing women candidates.
- ✓ If the electoral environment (especially within the political parties and their nomination processes) had been fair and more women had made it onto the ballot papers, they could have been as successful as male candidates.
- ✓ Change could occur if more women pursued elective positions.

## 2. PARLIAMENTARY APPOINTMENTS

For women to influence the legislative arm of government, they need to be fully involved and participate effectively in committees, as well as other influential house positions, including Speaker, Leaders of Majority and Minority, and Chairpersons of various parliamentary committees. These positions are key to guiding, swaying, and even manipulating the agenda of the legislature.

### Women's Representation in Key Positions and Committees

The tables below summarize the representation of women in key parliamentary positions and committees.<sup>51</sup> Notably, of the 10 leadership positions in the National Assembly, only two are held by women.

51 See [www.parliament.go.ke](http://www.parliament.go.ke)

| Leadership Position in NA  | Women Representation       |
|----------------------------|----------------------------|
| Speaker                    | None                       |
| Deputy Speaker             | 1 – Hon. Dr. Joyce Laboso  |
| Majority Leader            | None                       |
| Deputy Majority Leader     | 1 – Hon. Dr. Naomi Shabaan |
| Majority Chief Whip        | None                       |
| Majority Deputy Chief Whip | None                       |
| Minority Leader            | None                       |
| Deputy Minority Leader     | None                       |
| Minority Chief Whip        | None                       |
| Minority Deputy Chief Whip | None                       |

Regarding women leadership in National Assembly committees, seven out of the 27 committees are chaired by women, while, in another eight committees, women serve as vice-chairs.

| Women Chairpersons<br>7 women (out of a total 27 committees) | Women Vice-Chairpersons<br>8 women (out of a total 27 committees) |
|--|---|
| Liaison Committee  | Committee on Appointments   |
| Committee on Implementation                                  | Public Accounts Committee   |
| Committee on Regional Integration                            | Budget and Appropriations Committee                               |
| Environment and Natural Resources Committee                  | Justice and Legal Affairs Committee                               |
| Lands Committee  | Labour and Social Welfare Committee                               |
| Education, Research and Technology Committee                 | Committee on Constituency Development Fund                        |
| Catering and Health Club (House Keeping) Committee           | Constitution Implementation Oversight Committee                   |
|  | Procedure and House Rules Committee                               |

Representation of women in National Assembly committees in terms of membership is summarized in the table below. On average, women currently comprise 20 percent of the membership of all National Assembly committees in the 11<sup>th</sup> Parliament.

| <b>National Assembly Committees</b>               | <b>Men</b> | <b>Women</b> | <b>% of Women</b> |
|---|------------|--------------|-------------------|
| <i><b>House Keeping Committees</b></i>            |            |              |                   |
| House Business Committee                          | 23         | 9            | 28%               |
| Procedure and House Rules Committee               | 13         | 8            | 38%               |
| Liaison Committee                                 | 17         | 7            | 29%               |
| Committee on Selection                            | 14         | 6            | 30%               |
| Catering and Health Club Committee                | 15         | 7            | 32%               |
| <i><b>Standing Committees</b></i>                 |            |              |                   |
| Committee on Appointments                         | 22         | 6            | 21%               |
| Public Accounts Committee                         | 24         | 3            | 11%               |
| Public Investments Committee                      | 25         | 2            | 7%                |
| Budget and Appropriations Committee               | 47         | 4            | 8%                |
| Committee on Implementation                       | 23         | 6            | 21%               |
| Committee on Delegated Legislation                | 26         | 2            | 7%                |
| Committee on Regional Integration                 | 20         | 9            | 31%               |
| <i><b>Departmental Committees</b></i>             |            |              |                   |
| Defence and Foreign Relations Committee           | 23         | 6            | 21%               |
| Administration and National Security Committee    | 24         | 5            | 17%               |
| Agriculture, Livestock and Cooperatives Committee | 24         | 5            | 17%               |
| Environment and Natural Resources Committee       | 22         | 7            | 24%               |
| Education, Research and Technology Committee      | 19         | 10           | 34%               |
| Energy, Communication and Information Committee   | 25         | 4            | 14%               |
| Finance, Planning and Trade Committee             | 26         | 3            | 10%               |
| Health Committee                                  | 25         | 4            | 14%               |
| Justice and Legal Affairs Committee               | 25         | 4            | 14%               |
| Labour and Social Welfare Committee               | 20         | 9            | 31%               |
| Lands Committee                                   | 22         | 7            | 24%               |
| Transport, Public Works and Housing Committee     | 26         | 3            | 10%               |
| <i><b>Other committees</b></i>                    |            |              |                   |
| Committee on Constituency Development Fund        | 10         | 1            | 9%                |
| Constitution Implementation Oversight Committee   | 21         | 7            | 25%               |
| Pensions Committee                                | 8          | 0            | 0%                |

In the Senate, the representation of women in the 10 key positions is similar to that of the National Assembly. Only two women hold leadership positions: one as the Majority Chief Whip and the other as a Minority Deputy Chief Whip.

| <b>Leadership Position in Senate</b> | <b>Women Representation</b> |
|--------------------------------------|-----------------------------|
| Speaker                              | None                        |
| Deputy Speaker                       | None                        |
| Majority Leader                      | None                        |
| Deputy Majority Leader               | None                        |
| Majority Chief Whip                  | 1 – Hon. Beatrice Elachi    |
| Majority Deputy Chief Whip           | None                        |
| Minority Leader                      | None                        |
| Deputy Minority Leader               | None                        |
| Minority Chief Whip                  | None                        |
| Minority Deputy Chief Whip           | 1 – Hon. Janet Ongera       |

Women's leadership in Senate committees is greater than in the National Assembly. One of the 11 committees is chaired by a woman, while women serve as vice-chairpersons on six other committees.

| <b>Women Chairperson</b><br><b>1 woman (out of a total 11)</b> | <b>Women Vice-Chairperson</b><br><b>6 women (out of a total 11)</b> |
|--|---|
| Delegated Legislation Committee                                | Delegated Legislation Committee                                     |
|  | Health, Labour and Social Welfare Committee                         |
|  | National Security and Foreign Relations Committee                   |
|  | Devolved Government Committee                                       |
|  | Implementation Committee  |
|  | Education, Information and Technology Committee                     |

Overall, women currently comprise 28 percent of the membership in all the Senate committees.

| Senate Committees                         | Men | Women | % of Women |
|---|-----|-------|------------|
| Rules and Business Committee              | 8   | 4     | 33%        |
| Information, Communication and Technology | 6   | 3     | 33%        |
| Energy, Roads and Transportation          | 8   | 1     | 11%        |
| Finance, Commerce and Economic Affairs    | 7   | 2     | 22%        |
| Health, Labour and Social Welfare         | 7   | 2     | 22%        |
| Legal Affairs and Human Rights            | 7   | 2     | 22%        |
| National Security and Foreign Relations   | 7   | 2     | 22%        |
| Agriculture, Land and National Resources  | 6   | 3     | 33%        |
| Delegated Legislature Committee           | 5   | 4     | 44%        |
| Implementation Committee                  | 6   | 3     | 33%        |

As a bicameral body, the national parliament now has joint committees that draw membership from the National Assembly and Senate. So far, there are two joint committees: the Joint Committee on National Cohesion and Equal Opportunity, and the Joint Parliamentary Broadcasting and Library Committee. In both, women represent less than a third of the membership. In fact, it is ironic for women to be underrepresented in the Joint Committee on National Cohesion and Equal Opportunity since this committee is expected to perform tasks integral to the promotion of equal opportunity for women in Kenya and to oversee the elimination of gender discrimination in government bodies. Yet, it fails to respect the constitutional rule of gender representation. Similarly, the Joint Committee on Parliamentary Broadcasting and Library Committee has a key mandate relating to broadcasting of parliamentary proceedings and advising the Parliament on matters related to public participation. A gender-responsive approach to this mandate is critical to ensure that women are suitably portrayed in the media and female citizens are engaged in parliamentary business.

**Assessment of Women's Representation in Parliament:** To a large extent, women do not hold influential positions in the National Assembly and the Senate. The key leadership positions in both houses exercise some of the following important parliamentary functions: automatic leadership in key committees; direction of house debates; setting of the legislative agenda; and influence on parliamentary traditions, practices, and procedures. The uneven gender representation no doubt limits the potential for women's effective and influential participation in Parliament.

Parliament is largely run through committees. Leadership and membership on committees is, thus, important if women are to influence issues. Looking at the composition of the committees in the National Assembly, female representation in a majority of the committees fails to satisfy the two-thirds rule of gender representation. While it is conceded that the women's low representation in the various committees can to some extent be attributed to the relatively low number of women legislators in Parliament, more could have been done to select more women legislators to serve in several committees, thereby increasing their representation in the committees.



## Nevertheless: Quality over quantity

*Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has. –Margaret Mead.*

While numbers are important in political participation, what is far more valuable is the quality of participation and diligence by which women parliamentarians exercise their current capacities. Further, a reflection on the skewed gender composition of previous parliaments reveals the giant leap women made in terms of representation following the 2013 General Elections.

| Parliament                  | Period    | Total No. of Constituencies | No. of Women Elected | Available Slots for Nomination | No. of Women Nominated |
|-----------------------------|-----------|-----------------------------|----------------------|--------------------------------|------------------------|
| 1 <sup>st</sup> parliament  | 1963-1969 | 158                         | 0                    | 12                             | 0                      |
| 2 <sup>nd</sup> parliament  | 1969-1974 | 158                         | 1                    | 12                             | 1                      |
| 3 <sup>rd</sup> parliament  | 1974-1979 | 158                         | 4                    | 12                             | 2                      |
| 4 <sup>th</sup> parliament  | 1979-1983 | 158                         | 5                    | 12                             | 1                      |
| 5 <sup>th</sup> parliament  | 1983-1988 | 158                         | 2                    | 12                             | 1                      |
| 6 <sup>th</sup> parliament  | 1988-1992 | 188                         | 2                    | 12                             | 0                      |
| 7 <sup>th</sup> parliament  | 1992-1997 | 188                         | 6                    | 12                             | 1                      |
| 8 <sup>th</sup> parliament  | 1997-2002 | 210                         | 4                    | 12                             | 5                      |
| 9 <sup>th</sup> parliament  | 2002-2007 | 210                         | 10                   | 12                             | 8                      |
| 10 <sup>th</sup> parliament | 2007-2012 | 210                         | 16                   | 12                             | 6                      |

Currently, there are a total of 86 women in Parliament (National Assembly and Senate). Indeed, previous women parliamentarians managed to achieve significant gender gains with extremely low numbers and far less gender consciousness than Kenya enjoys now. Therefore, it is anticipated that the current Parliament will achieve the greatest impact in gender-responsive oversight, legislation, and influence of parliamentary culture.

## 3. CABINET SECRETARIES

Under the current constitutional dispensation, Cabinet Secretaries are now appointed, form part of the executive arm of government, and cannot serve as elected parliamentarians as in the past. After the elections, the Jubilee Government established 18 ministries. Six women Cabinet Secretaries were nominated by, and subsequently appointed to, the Cabinet by the President.

This move by the Executive was welcomed, even more so, because, for the first time, women Cabinet Secretaries were appointed to key cabinet portfolios:

1. Cabinet Secretary for Devolution and Planning – Anne Waiguru
2. Cabinet Secretary for Foreign Affairs – Amb. Amina Mohammed

3. Cabinet Secretary for Defence – Amb. Raychelle Omamo
4. Cabinet Secretary for Land, Housing and Urban Development – Hon. Charity Ngilu
5. Cabinet Secretary for EAC Affairs, Commerce and Tourism – Phyllis Kandie
6. Cabinet Secretary for Environment, Water and Natural Resources – Prof. Judi Wangalwa Wakhungu

The portfolios to which women have been appointed are fundamental in guiding the economic and security direction of the nation and the nation's relations with external partners. Appointment of women to these key positions will likely impact societal attitudes about women's leadership. However, the numbers represent just the bare minimum required by law. The Government's precise 'not more than two-thirds of either gender' appointment, while a positive step toward increasing women's representation, illustrates the need for further efforts aimed at attaining **equality** in all spheres of life in keeping with the spirit of the Constitution.

#### 4. COUNTY EXECUTIVE COMMITTEE

County executive authority is implemented through the County Executive. It is at this level that the executive policy for the governance of the county is determined. The County Executive Committees at the county level are akin to cabinet positions at national level. The table below takes a look at the representation of women in the various County Executive Committees.<sup>52</sup>

|            | Men | Women | % of Women |
|------------|-----|-------|------------|
| Nairobi    | 7   | 3     | 30%        |
| Nyamira    | 7   | 3     | 30%        |
| Kisii      | 6   | 4     | 40%        |
| Migori     | 4   | 1     | 20%        |
| Homabay    | 7   | 3     | 30%        |
| Kisumu     | 6   | 4     | 40%        |
| Siaya      | 5   | 3     | 38%        |
| Busia      | 8   | 2     | 20%        |
| Bungoma    | 7   | 3     | 30%        |
| Vihiga     | 7   | 3     | 30%        |
| Kakamega   | 5   | 4     | 44%        |
| Bomet      | 7   | 3     | 30%        |
| Kericho    | 6   | 3     | 33%        |
| Kajiado    | 7   | 3     | 30%        |
| Narok      | 7   | 2     | 22%        |
| Nakuru     | 5   | 4     | 44%        |
| Laikipia   | 4   | 2     | 33%        |
| Baringo    | 5   | 4     | 44%        |
| Tana River | 8   | 2     | 20%        |
| Kilifi     | 7   | 3     | 30%        |
| Kwale      | 7   | 2     | 22%        |
| Mombasa    | 6   | 1     | 14%        |
| Kirinyaga  | 6   | 3     | 33%        |
| Muranga    | 7   | 3     | 30%        |

|                 | Men | Women | % of Women |
|-----------------|-----|-------|------------|
| Nandi           | 7   | 3     | 30%        |
| Elgeyo Marakwet | 5   | 2     | 29%        |
| Uasin Gishu     | 5   | 1     | 17%        |
| Trans Nzoia     | 5   | 1     | 17%        |
| West Pokot      | 7   | 3     | 30%        |
| Turkana         | 6   | 4     | 40%        |
| Kiambu          | 1   | 6     | 86%        |
| Nyeri           | 7   | 1     | 13%        |
| Nyandarua       | 6   | 3     | 33%        |
| Makueni         | 6   | 4     | 40%        |
| Machakos        | 6   | 4     | 40%        |
| Kitui           | 7   | 3     | 30%        |
| Embu            | 5   | 2     | 29%        |
| Tharaka Nithi   | 7   | 3     | 30%        |
| Meru            | 7   | 3     | 30%        |
| Isiolo          | 5   | 2     | 29%        |
| Marsabit        | 7   | 1     | 17%        |
| Mandera         | 5   | 2     | 29%        |
| Wajir           | 8   | 3     | 27%        |
| Garissa         | 8   | 2     | 20%        |
| Taita Taveta    | 5   | 3     | 38%        |
| Lamu            | 2   | 2     | 50%        |

52 At the time of completing this study, Samburu County had not yet gazetted its County Executive members.

Looking at the table, only 16 of 47 counties (about one-third) have satisfied the two-thirds rule of gender representation in the County Executives. Of those counties that have satisfied the two-thirds rule, women comprise the bare constitutional minimum. At 86 percent, Kiambu County has the highest representation of women in the County Executive.

## 5. COUNTY ASSEMBLY SPEAKERS

Men constitute 44 out of 47 County Assembly Speakers. Given that County Assemblies are well constituted in terms of membership, i.e., they comprise not more than two-thirds of either gender, male domination of the top leadership position could be considered surprising. However, it is likely explained by the fact that the elections for Speakers were conducted before the nominated women members of County Assemblies were appointed, meaning the assemblies were disproportionately male-dominated at the time of their election. The delay in appointing the nominated women was a direct result of IEBC's mismanagement of the party lists that led to the High Court case discussed previously, which placed women at a disadvantage as the County Assemblies were constituted. Female speakers were only elected in Kisumu, Kirinyaga, and Nakuru counties.

## B. PERSPECTIVES OF WOMEN CANDIDATES IN THE 2013 ELECTIONS

The objective of this section is to document the experiences of women aspirants and candidates participation in the 2013 electoral and political processes. FIDA Kenya interviewed women candidates and aspirants<sup>53</sup> with a view to establishing their perspectives on various aspects of the electoral environment. Their narratives reveal the direct impact on their participation of the electoral environment in terms of the law, as well as the various acts and omissions of duty bearers and other stakeholders.

### 1. ELECTORAL PROCESSES

#### Political Party Selection

During the 2013 elections, political party selection was assessed as one of the most pivotal factors in the success or failure of women aspirants and candidates. Respondents were asked whether the fact that they were a member of a certain political party or coalition benefited or disadvantaged their candidacy. Successful respondents cited the following positive measures by their parties as contributing to their success:

- ✓ Preferential or subsidized nomination fees for women candidates.
- ✓ Financial support specifically provided to women candidates.
- ✓ Public shows of support for their candidacies by the political party machinery, such as organized group campaigns or platforms that presented candidates from the same party

53 See Appendix 1 for a list of the women interviewed

across various positions and regions.

- ✓ Public endorsements from party leaders, which had the greatest impact in party strongholds or in those parties that had presidential candidates.
- ✓ Provision of free campaign materials and merchandise, such as T-shirts, caps, printed lesos (wrappers), and motorbike reflectors, that helped to increase their visibility and popularity.
- ✓ Support from the party, especially from party leaders, in terms of advice and strategy.
- ✓ Assistance in attending capacity-building and training sessions.

Conversely, those who did not succeed mentioned the following factors as having contributed to their failure:

- ✓ Exclusion from competitive nominations where direct nominations were issued by the party to its choice candidates.
- ✓ Lack of public support or endorsement from the political party leadership.
- ✓ Lack of financial or other in-kind support, a factor that was particularly prevalent in the smaller political parties.

Overall, the greatest contributing factor to success was riding the 'political tide' of a party in its regional stronghold. Most women candidates attributed their success to the choice of a popular political party, particularly in party strongholds. However, there were notable exceptions of women candidates who beat the odds by going against the political 'tide' and still emerging victorious.

### Political Party Nominations

The most prevalent trend noted with regard to women's experiences in the nomination process was the impact of 'party hopping.' Specifically, in some cases where a woman candidate won the party nomination, the defeated opponent at the party primary was irregularly able to obtain a nomination certificate from a different party. In these cases, candidates managed to manipulate the system by either holding multiple party registrations or changing party membership outside legal timelines and, nevertheless, obtaining official nomination certificates to contest elections, which was a major failing of the IEBC and the office of the RPP. As a consequence of party hopping, the following challenges were mentioned:

- ✓ Succeeding in the party nominations is almost futile as women still have to contend with the same opponents at the ballot box.
- ✓ Party hopping lowered the chances of women candidates being elected by:

Splitting the party votes, all of which would have ideally gone to the *bona fide* nomination ticket holder.

Creating confusion among the electorate where the opponents masqueraded as the official party candidate, such as through the use of the party's colours.

- ✓ Creating a challenging and very unfair electoral environment when a hurdle which women had supposedly overcome re-materialized.
- ✓ Making the campaigns more expensive as women had to contend with additional opponents, including those originally from other parties.

In addition, respondents also cited:

- ✓ Disorganization by parties, such as delays in the delivery of nomination papers.
- ✓ Failure to use the party registers, thus opening the nomination process to “outside” influence.
- ✓ Irregularities in counting of votes.

### Campaign Period

The number of women candidates increased during these elections and for these women, a conducive environment was one that was free of violence and where electoral malpractices were at a bare minimum. A number of efforts had been made to promote such a favorable environment. For example, the Elections Act provided for stiffer penalties for electoral malpractices, including violence and vote bribery, in order to provide a level playing field for all competitors. The law also stated that candidates would be provided with security during campaigns. In addition, the Electoral and Political Parties’ Codes of Conduct provided guidelines on how various actors should conduct themselves in the electoral process. In addition to the legal framework, a number of institutions both governmental and non-governmental were involved in conflict prevention activities, such as early warning and response, and in the provision of technical support to women candidates in various forms.

Despite the foregoing framework, women candidates contend that the challenge lays in the enforcement of these laws, particularly related to electoral offences. As a result, women candidates were subject to threats and intimidation, underhanded actions by opponents, and smear campaigns.

The non-regulation of campaign financing was noted as a challenge for the women candidates, the respondents also claimed hard hitting use of propaganda — both of these challenges are conclusively discussed further below.

### Election Day

Although incidents of violence were reported in Mombasa and the North (Marsabit and Wajir),<sup>54</sup> Election Day was generally peaceful. The ELOG report indicates that 99.9 percent of the polling stations sampled had security personnel present,<sup>55</sup> which contributed to peace on Election Day. The participation of women in Election Day processes as polling officials, security officers, observers, and party agents was noted.<sup>56</sup>

54 European Union Election Observation Mission to Kenya, Final Report, General Elections 2013

55 ELOG 2013 Elections report

56 AU report

Election observation reports indicate that the elderly, expectant mothers, and disabled were exempted from queuing in most polling stations.<sup>57</sup> However, there were cases where expectant mothers and old women were neglected with some fainting while waiting to vote.<sup>58</sup>

Though the Constitution provides for political rights including citizens' right to vote for candidates of their choice, this right still remains a mirage for a number of women due to patriarchal cultures. During Election Day, the Women's Situation Room reported six gender based violence cases. Of the six, two were wife batterings by husbands for not voting for the "correct" candidates.<sup>59</sup> In Kitui County, Mlango location, the Kenya Human Rights Commission report indicated a husband threatened to disown his wife (Nzambi Mwendwa) for not voting for his brother-in-law, who was contesting for the County Assembly seat as a Wiper candidate.<sup>60</sup>

As for the women candidates, their perception of Election Day is largely prejudiced by the eventual outcome of their individual race—and is, therefore, diverse. However, whether successful or not, the following conclusions can be deduced:

A good number of respondents cited verifiable instances of vote bribery outside polling stations with no action from authorities.

Large numbers of voters were assisted unsupervised by presiding officers who may or may have not compromised the secrecy of the ballot.

Most women candidates hired their own agents because they did not trust the party machinery and felt that party agents were too focused on the presidential election alone.

Some smaller parties failed to provide agents for their candidates despite having committed to do so.

A few respondents belonging to smaller parties also complained that their agents were ejected or sidelined by IEBC during voting and counting due to physical space constraints.

## 2. KEY CHALLENGES

The most prevalent concern raised by the respondents (whether successful or not) was the non-enforcement of the Electoral Code of Conduct, which resulted in a very challenging electoral environment rife with underhanded conduct by opponents, irregularities, and even direct contravention of the laws. The lack of campaign finance regulations was also noted as a challenge, particularly for women. Finally, respondents cited the overwhelming challenge of hard hitting propaganda.

### Threats and Intimidation

Overall, there were few reported incidences of actual direct violence against women candi-

57 CAJ elections report

58 See [www.elections.nation.co.ke/news/Lobby-faults-treatment--of-women/-/1631868/1712618/-/vdcy3/-/index.html](http://www.elections.nation.co.ke/news/Lobby-faults-treatment--of-women/-/1631868/1712618/-/vdcy3/-/index.html)

59 Women's Situation Room report

60 Countdown to the March 2013 General Elections: Interim Elections Monitoring Report, Kenyan Human Rights Commission 2013

dates. In a few instances, incidences of violence were perpetrated on their associates (e.g., agents, supporters), particularly during the campaign period. However, the threat of violence was rife and used as an intimidation tactic by opponents. Although the law provides security for candidates, it was not adequate due to the large number of candidates. Some of the women candidates interviewed paid for security, while others completely avoided any movement at night in response to perceived threats.

Despite the relatively peaceful campaign atmosphere, observers noted isolated incidences of violence and intimidation against women candidates and their supporters in a few parts of the country. According to a study conducted by African Women and Child Feature Service, the main forms of violence against women included intimidation, propaganda, and physical assault. Others included threats, destruction of property, abductions, verbal abuse, and use of derogatory language to demean women.<sup>61</sup> During the campaign period, the National Cohesion and Integration Commission (NCIC) expressed concern over harassment and intimidation of women candidates, as the March 4 election drew near.<sup>62</sup> International observer reports also noted some of these incidents.<sup>63</sup>

Women interviewed by FIDA reported their most prevalent challenge as being verbal intimidation aimed at discouraging them from competing for elective positions. The intimidation was more pronounced prior to party nominations and during campaigns and was mainly targeted at female candidates who were deemed to be strong opponents. Some of the respondents had this to say about threats and intimidation:

*I will beat you by hook or by crook whether I'll beat you, bribe your voters, or steal your votes. (A male opponent to a female candidate)*

*I was confronted with a situation where I received threats to my life, while my supporters were physically abused or intimidated. This made it difficult to access some of the areas and compete with my rivals on an equal footing.<sup>64</sup> (Janet Chepkwony, Candidate for Nandi County Assembly)*

*The intimidation is always there, some of the candidates that were there were there just as puppets...candidates specifically came up to ensure that they would take some of the vote so I did not get all the votes. I know this because in campaign I am expected to go to present my agenda to the people, the new candidates didn't say anything other than don't vote for me, no other campaign agenda was presented by them. (Anonymous Female Candidate)*

*I heard that somebody was going to attack me and I think they came to my home when I was not there. I wrote to my main opponent through my lawyer asking him to stop his intimidating actions, and also reported to police, my lawyer served him but then we didn't go to court, because he came to apologise. (Hon. Caroline Owen, Chief Whip for the Minority, Kisumu County Assembly)*

61 See [http://awcfs.org/new/index.php?option=com\\_docman&task=cat\\_view&gid=138&Itemid=128](http://awcfs.org/new/index.php?option=com_docman&task=cat_view&gid=138&Itemid=128)

62 See <http://www.capitalfm.co.ke/news/2013/02/coercion-of-female-politicians-worrying-ncic/>

63 European Union Election Observation Mission to Kenya, Final Report, General Elections 2013.

64 See <http://iwpr.net/report-news/female-candidates-claim-discrimination-kenyan-elections>



## Underhanded Actions by Opponents

In addition to verbal intimidation, female candidates were subjected to underhanded, intimidating actions by their opponents aimed at discouraging their participation, including:

- ✓ Interference with the party nomination process by male opponents by corrupting party officials at the expense of women candidates.
- ✓ Application of unconventional means, such as spreading printed, maligning information to discourage voters from voting for women candidates.
- ✓ Being offered money to drop their campaign or candidacy.
- ✓ Creation of a hostile political environment by male opponents paying out money to hecklers to boo down the female candidates at political rallies.

Some of the respondents faced the following underhanded actions:

*Normally when I get verbal insults I let them pass, but in pre nomination, we were in Langata and somebody placed a dead body where we were meant to do the nomination – this was directed to the party, or maybe me, I'm not sure but it was to cause fear, police said person was killed elsewhere but the body was deposited in that place – and I was afraid. The polling station had to be moved elsewhere and this was very disruptive, and hurt my nomination process. (Mary Kimwele, Candidate for County Women Representative, Nairobi)*

*On the morning of nominations, packed condoms were strewn in polling stations labeled in my name written, "A gift from Alice Muthoni Wahome to the people of Kandara constituency. Kandara tupange uzazi" (Hon. Alice Wahome, Member of National Assembly Kandara)*

*One of the opponents was saying that I should be humiliated. He had offered to pay Kshs. 10,000 to any youth who pulled my skirt. (Hon. Dr. Joyce Laboso, Deputy Speaker, Member of National Assembly Sotik)*

## Propaganda and Smear Campaigns

Women candidates reported widespread use of propaganda that was aimed at tarnishing their reputation and denting their image in an attempt to discourage voters from voting for them.<sup>65</sup>

Respondents noted that the propaganda was largely gender-based as it generally echoed gender or cultural stereotypes. It was characterized by personal attacks on morality and dignity, family, or ethnicity. There were also insults and provocations meant to incite violence. Some of the respondents said the following about the propaganda and smear campaigns:

*This [propaganda] was my most painful challenge – everyday there was a new propaganda, which you're unable to counter. (Anonymous Female Candidate)*

*There was a lot of propaganda and allegations touching on family values and in the rural setting it was successful (Rozah Buyu, Candidate for Member of National Assembly Kisumu West)*

65 See <http://www.youtube.com/watch?v=BAgJxUJGxHc>



*The manner of propaganda was tailored for a female candidate... they're demeaning and are meant to bring you to ridicule and to intimidate you. Men will not spare anything to scare, to frighten or to threaten... (Hon. Alice Wahome, Member of National Assembly Kandara)*

*Verbal attacks on my person... the propaganda. You can't control it, and it's manufactured on a daily basis. (Hon. Dr. Joyce Laboso, Deputy Speaker, Member of National Assembly Sotik)*

*I was discriminated against because of marital status. In my community, if you cannot raise a family, then you cannot be a leader. All men were fighting me. They spread propaganda that I was pregnant and I aborted. They also said that I am a very old woman. There were those women who said that they cannot vote for a woman.<sup>66</sup> (Hon. Mary Emaase, Member of National Assembly Teso South)*

*One of the propaganda that they said about me was that after I finished nominations...I removed my blouse and threw it. I then held my breasts and said that men in my constituencies will suckle my breasts for the next five years while they're standing. According to the Kikuyu customs, that was vulgar, repelling and insulting to the men. (Hon. Alice Wahome, Member of National Assembly Kandara)*

*Vying for elective position as a woman comes with its consequences. I suffered character defamation, especially from my competitors who went around soiling my name, hoping that I would step down. When women vie for public office, their private lives are usually attacked as a way of intimidating them, but I overcame that!<sup>67</sup> (Hon. Gertrude Mbeyu, Member of County Assembly Kilifi County)*

## Inadequate Financial Resources

Financial resources are important during campaigns for items including logistics, campaign materials, and media, as well as recruitment and sustenance of campaign teams—all important to enabling candidates to effectively reach voters. National and international observers reported huge campaign expenditures in an environment where campaign expenditure was not regulated, which tilted the playing field to the disadvantage of candidates from marginalized groups and smaller parties.<sup>68</sup> Indeed, all women reported financing as a major problem,<sup>69</sup> but especially the candidates for county women representatives who had to traverse a very large electoral area, i.e., the whole county. Many women candidates complained that their parties or coalitions did not provide sufficient campaign funds to facilitate their candidacies. They felt that extra effort should have been made toward assisting women candidates given their generally lower access to resources.

The challenge of access to resources was further compounded by the non-regulation of campaign financing. The irregular use of campaign funds served to further skew the odds against women candidates most of whom are ordinarily less financially endowed than their male

66 Citizen TV, See [http://www.youtube.com/watch?v=wC88W9Y\\_27U](http://www.youtube.com/watch?v=wC88W9Y_27U)

67 See <http://www.ndi.org/kenya-elected-women>

68 See Report of African Union Elections Observation Mission to the 4 March 2013 General Elections in Kenya, Report of the Commonwealth Observer Group, Kenya elections 2013

69 See <http://www.nation.co.ke/News/politics/Women-sidelined-in-poll-race/-/1064/1714236/-/10usqp1z/-/index.html>

counterparts. Respondents noted flagrant issuing of handouts by candidates; this practice then predisposed the citizenry to request for handouts from women candidates and where they wouldn't acquiesce this bestowed an unfair advantage to their opponents. See below some quotes regarding finances:

*My biggest challenge was financial. The logistics of running for a political office are very costly. I couldn't afford to hire a campaign manager or security personnel. I was basically doing everything on my own.<sup>70</sup> (Hon. Priscilla Nyokabi, County Women Representative Nyeri)*

*Handouts were a big issue, if IEBC staff can ask you for lunch... [during Elections day] (Juliet Makokha, Candidate for County Women Representative Bungoma)*

*Dealing with the propaganda also leads to increased costs. I had to increase caravans to counter the propaganda that had been spread. Also to clean up the condoms that had been strewn with my name (Hon. Alice Wahome, Member of National Assembly Kandara)*

### Cultural Beliefs and Gender Stereotypes

In Kenya, women leadership still suffers setbacks by virtue of cultural and patriarchal stereotypes and beliefs. There are some parts of the country where communities still believe that it is a curse for a woman to lead. During the campaign period, various media houses featured the story of a female aspirant in Kajiado County, Peris Tobiko, who was cursed by community elders for aspiring for a parliamentary seat, saying it was against tradition.<sup>71</sup> Indeed this is not an uncommon prejudice as evidenced by what other women candidates faced below:

*People in my clan, other clans, and other candidates kept saying to me 'what are you women looking for, your place is not in politics, go and stay with your family, you don't respect men, you are Muslim you're not supposed to be in politics. (Rukia Subow, Candidate for County Women Representative Wajir)*

*I received numerous persuasions from elders and opinion-shapers who asked me to pull out, arguing that it was still unsuitable for women to participate in competitive leadership.<sup>72</sup> (Grace Tallam, Candidate for Nandi County)*

*Queries were raised by my male rivals over the source of [campaign] funding, considering that women do not inherit such properties like land from their parents.<sup>73</sup> (Moiria Chepkok, Candidate for Uasin Gishu County)*

*My husband at the time was vying...people would ask me why are you standing when your husband is standing. However, we were not vying for the same position, we are independent people. This is not a reason for me not to stand. Many people told me this, like relatives, saying you are a woman you should not interfere with this process, you will deny your husband this opportunity, but it had nothing to do with him, he was vying for another position. (Anonymous Female Candidate)*

70 See <http://www.ndi.org/kenya-elected-women>

71 See <http://elections.nation.co.ke/news/Elders-accused-of-cursing-female-aspirant/-/1631868/1679212/-/m8de7g/-/index.html>

72 <http://iwpr.net/report-news/female-candidates-claim-discrimination-kenyan-elections>

73 Ibid

*In my region there has never been a woman elected, women have never represented men in that region, they have never been elected even at the council level – we have only had one woman councilor who has ever been elected in the region – only men should lead not women – this the people's attitude. (Rukia Subow, Candidate for County Women Representative Wajir)*

*They [opponents] would always insist on the issue of my being married to someone from another community. (Hon. Dr. Joyce Laboso, Deputy Speaker, Member of National Assembly Sotik)*

*During public rallies, they would ask how can you elect a woman who is not even married? (Anonymous Female Candidate)*

*I know of a candidate in Garissa County where her political rivals were using religion to try and dissuade people from voting for her. 'A woman running for a man's seat is haram [sinful],' they say. 'People who vote for her will go to hell.'<sup>74</sup>*

### Negative Effect of Affirmative Action

In addition to propaganda aimed at tarnishing the character of the candidates, rivals used the affirmative action seats as arguments to deter voters from voting for women candidates. Reports from women from various parts of the country indicate that there was widespread misinformation circulating to the effect that women could not vie for any position other than those reserved for women. This type of propaganda was meant to discourage voters from voting for women in seats that were open to both men and women.<sup>75</sup>

Thus, in a strange twist, the affirmative action elective seats also produced some disadvantages for women candidates, including:

- ✓ Male opponents perpetuated the belief that women were only supposed to vie for the county women representative seats.
- ✓ Political parties would pressure women candidates to only vie for the set-aside seats.
- ✓ Women candidates who ran for mainstream elective seats were made to appear greedy because they already had their own set-aside seats.

More effective civic and voter education on the part of the IEBC could have lessened the impact of this misinformation. Instead, women candidates were forced to conduct their own civic education.

See below the some of the negative effects discussed:

*The electorate was not accustomed to women candidates. They also didn't understand the new woman rep seat and in fact some of them said that they would vote not for this position at all. They thought that I am only going to represent women and therefore men shouldn't vote for that position. (Hon. Fatuma Ibrahim Ali, County Women Representative Wajir)*

74 Wangari Kinoti, Women's Right Coordinator, Action Aid Kenya, See <http://www.aljazeera.com/indepth/features/2013/03/20133811154329530.html>

75 See <http://reportingkenya.net/reports/female-candidates-claim-discrimination-in-kenyan-elections/>, <http://iwpr.net/report-news/female-candidates-claim-discrimination-kenyan-elections>

*Some male rivals confused the electorate [by arguing] that women could not vie for any other positions apart from that of women's representative, men are highly rated in society and the propaganda was taken as gospel truth.<sup>76</sup> (Rhoda Rotino, Candidate for West Pokot County)*

*When I first went to politics I wanted to contend against men people but kept telling me to run for women's rep, saying I had no place for running in normal seats, as there are seats reserved just for women. So I ran eventually for women's rep. (Mary Kimwele, Candidate for County Women Representative Nairobi)*

## Ineffective Responses from Institutions

Women candidates mainly sought protection from their political parties and the National Police Service when confronted with security issues. The next most preferred institution was the IEBC. A select few sought legal protection in the courts or protection from family members and their social networks, such as women groups, while some approached CSOs, NGEC, and NGOs.

Some interviewees indicated that they did not seek protection from the police as they felt that it would be of no assistance or would act in a way that would alienate or intimidate constituents. When they did seek assistance from the police, many interviewees reported that responses they received were ineffective, such that their complaints were not taken seriously. In one instance, the police specifically said that it would not get involved in the woman's complaint as it was political and the police did not want to engage in politics. In the few instances when police were able to provide assistance, it was mainly through informal means, such as discussing issues with perpetrators and coming to agreements to cease intimidating behaviour.

The two major problems encountered in the sphere of security can be summarized as follows:

- ✓ Ineffective responses of institutions, like the IEBC, police, and political parties, such that institutions either did nothing to respond to complaints, did not take the complaints seriously and follow up, or were not approached due to a perception that they would be unable/unwilling to assist.
- ✓ Corruption within institutions that prevented effective responses.
- ✓ Lack of transparency from institutions to highlight the complaints and take action to warn perpetrators that acts of intimidation would not be dealt with impunity.

See below some sampled responses in this regard:

*I visited their (IEBC's) offices more than once to complain and even wrote to them through my lawyer and personally. They were in breach of the election rules, they allowed promotional materials to be put up at the wrong times, they said well we didn't see the people who put them up, they did not monitor this at all. Also, they declared the wrong person the winner. I had more votes and that is why I am now at court trying to fix this situation. IEBC never responded to my concerns. (Anonymous Female Candidate)*

76 See <http://iwpr.net/report-news/female-candidates-claim-discrimination-kenyan-elections>

*IEBC were not effective at all (regarding various reports made and assistance sought)...The system is still very frustrating to women (Rozah Buyu, Candidate for Member of National Assembly Kisumu West)*

*I told them we were not having a level playing ground because they already knew who they wanted to win. This is not democracy, they were supporting specific people but when I confronted them, they just denied this. (Anonymous Female Candidate)*

*Even if there is a petition on the ground to repeat the 2013 elections I wouldn't go back because the same people that stole my victory will still be there, the same people with the same money, systems will be same...Only if the government came forward to say that all IEBC officials have changed, all police have changed, would I go back. In Kilifi specifically the bribery was so rife that the whole electoral process was made a mockery of. (Naomi Cidi, Candidate for Senator Kilifi County)*

### 3. SUCCESS FACTORS

Those respondents who were successful overwhelmingly indicated their experience from previous work or roles as the greatest success factors. Among other factors, they pointed to:

- ✓ Previous community work and involvement.
- ✓ Being a brand name or known to the voters in other capacities.
- ✓ Connecting with the electorate long before the elections.
- ✓ Incumbency and experience: delivery on promises in the previous term to constituents.
- ✓ Development of a record based on incumbency or personal effort.
- ✓ Conducting civic education for the community.

Other contributory success factors noted include:

- ✓ Successful nomination by a popular party.
- ✓ Picking a supportive party and campaign team.
- ✓ Starting to work the ground early — this also helped in picking the best party and getting to know the voters.
- ✓ Early planning in terms of saving resources or identifying points of support.
- ✓ Access to sufficient funds.
- ✓ Being educated, empowered, and well-trained—thus, able to articulate issues well.
- ✓ Resilience and consistency.
- ✓ Strong support from constituents.
- ✓ Strong support base from family and other community members.

- ✓ Support from women organizations.

#### 4. QUOTABLE QUOTES

As a conclusion to this chapter, the report reproduces some of the most quotable quotes from the interviews conducted:

*Political parties are animals that belong to the men, and us [women], we're just trespassers... we just push our way in. (Hon. Esther Murugi, Member of National Assembly Nyeri Town)*

*Every effort was made to sabotage women's equal participation in elections. (Daisy Amdany, de facto spokesperson of the National Women Steering Committee)*

*You can't empower women and educate them, yet deny them a chance to lead. (Serah Kahiu, Candidate for Senator Kiambu County)*

*Start early, stay focused and organize your finances [regarding contesting elections]. (Hon. Dr. Joyce Laboso, Deputy Speaker, Member of National Assembly Sotik)*

*We need a linkage in the generation of women leaders... we [beginner politicians] shouldn't have to re-invent the wheel. (Hon. Priscilla Nyokabi, County Women Representative Nyeri)*

*If you want to go fast, go alone but if you want to go far go with people and community. (Hon. Alice Chae, County Women Representative Nyamira)*

*Politics is an interesting field [that] women should have a chance to participate in. Politics is where it happens... it's so dynamic. (Hon. Dr. Joyce Laboso, Deputy Speaker, Member of National Assembly Sotik)*

*The reason why we need women leadership is for better management at all levels, especially in Parliament. The women parliamentarians must move fast and set the gender agenda, otherwise come 2017, we'll have to defend ourselves on what we have achieved. This is the bitter truth, men can perform poorly, but for women, it will not be that easy. (Winfred Lichuma, Chairperson National Gender and Equality Commission)*

*First and foremost, women must be supportive of each other! (Hon. Esther Murugi, Member of National Assembly)*

## CHAPTER FOUR

# Recommendations

This audit has revealed pertinent issues that affected women as they pursued their civic and political rights during the 2013 elections in Kenya. Constitutional and other women's gains that were upheld have been highlighted. At the same time, the omissions that worked to impede women's participation have been analyzed with a view to depicting the 'cause-and-effect' of various gaps, actions, and inactions. This chapter seeks to summarize the resulting recommendations that need to be in place in order to enhance women's participation and representation in future electoral and political processes.

## A. LEGAL FRAMEWORK

This audit revealed two key challenges with regard to the electoral and legal framework: 1) lacunae in the current framework; and, 2) non-implementation of existing gains.

### 1. TWO-THIRDS RULE OF GENDER REPRESENTATION

Above all, the most pressing need and recommendation for this report is the need to enact legislation envisaged by the Supreme Court's Advisory Opinion to give full effect and provide a mechanism for actualization of the two-thirds rule in elective bodies (Parliament). This duty primarily falls to the office of the Attorney General (AG) and Parliament, and such legislation must be in place by August 27, 2015. Other influential stakeholders key to success in this endeavor will include: NGEK, CIC, FIDA Kenya, and the Kenya Women's Parliamentary Association (KEWOPA), as well as the women's movement in general.

### 2. LEGAL REFORM

The legal framework influences key factors to women's participation, such as gender parity and inclusion. The following legal reforms are necessary in order to enhance the fairness of the electoral process for all, including women:

- ✓ Establishment of suitable election timelines through the electoral regulations: This report has noted that amendments to existing election timelines led to party hopping, delayed voter registration, delayed nominations, limited time for resolution of disputes in the nomination process, and a general sense of urgency that prioritized process over participation. All these factors disproportionately affected women's participation. We recommend a return to the originally enacted timelines by an amendment to the Elections Act, as well as enactment of a legal proviso that prohibits amendments to election timelines at



least one year prior to the General Election.

- ✓ Enactment of campaign finance legislation: As noted, a campaign finance law will regulate and enhance fairness of the campaign for all candidates, especially women who are often less financially empowered.
- ✓ Amendment to the Elections Act to provide more guidance on the rules that must guide the political parties in development of their party lists. As it is, the Act merely restates the provisions of the Constitution.
- ✓ Amendment to the Elections Act to review the high fees for filing an election petition. FIDA Kenya suggests an affirmative action subsidy in line with the Constitution so that women will find it more affordable to file cases and thereby enhance their access to justice.
- ✓ Amendment of the Political Parties Act to require parties to submit an affirmative action policy, along with other party policies and plans already required. This recommendation would be in line with the constitutional requirement for political parties to be inclusive.

## B. IMPLEMENTATION

The recommendations under this section are directed at specific duty bearers to ensure that they execute their mandate to enable women to fully realize their political rights. These institutions are also encouraged to take positive and proactive measures guided by the Constitution and recognized best practices for the increased inclusion of women in the political process.

### 1. TO THE IEBC

As the elections management body, IEBC holds a great deal of authority over the conduct of electoral processes and their inclusiveness. Based on the audit findings, FIDA Kenya makes the following recommendations to the IEBC:

- ✓ Develop a policy to ensure the participation in elections of women, youth, and persons with disability, which, in fact, is one of the orders of the High Court issued during the party list petition.
- ✓ Exercise its authority to regulate and oversee all political party nominations, including developing regulations creating mandatory provisions stipulating the exact manner of supervision in order to ensure democratic nomination exercises.
- ✓ During electoral periods—be they general elections, by-elections, or referenda—monitor strict compliance with the Electoral Code of Conduct. Where violations occur, IEBC must impose sanctions as defined in the law on offending individuals and parties in order to curb the culture of impunity.
- ✓ Develop campaign finance regulations—even in the absence of campaign finance legislation, IEBC is well within its mandate to regulate the financing of campaigns during elections. This function is defined both in the Constitution and in the IEBC's regulatory powers in the Elections Act.



- ✓ Conduct timely voter education in all elections and ensure that the education programmes target women and other special interest groups.

## 2. TO THE POLITICAL PARTIES

Political parties hold the key to women's entry and effective participation in politics. This audit urges political parties to respect the existing laws, but more importantly, to fully utilize their platforms and influence to enhance women's participation in politics. Specifically, FIDA Kenya recommends that political parties:

- ✓ Develop or revise their party documents—including party constitutions, nomination rules, other guidelines, and policies—to provide for specific affirmative action measures that increase women's participation within their parties.
- ✓ Put in place measures to ensure that women are not only represented in the party governing body, but further consider exercising gender parity in the appointment to leading positions (e.g., Chairperson and Secretary General) that could come from alternate genders.
- ✓ Ensure that all decentralized units of the party require gender parity in their composition. For instance, in this audit, we noted that most parties did not require their dispute resolution bodies to be gender representative even though the body is key to women's access to justice within parties.
- ✓ Respect and uphold the Constitution, legislation, and party rules in all party exercises including nominations, development of party lists, party membership, and dispute resolution.
- ✓ Put in place affirmative action measures that will lead to the increased candidacy of women in elections. Measures could include purposely nominating women to run for elective seats in party strongholds, creating quotas to ensure a minimum number of women run, and adopting other progressive strategies. If implemented by all parties, this particular recommendation has the potential impact of lowering the overall number of nominated seats to satisfy the two-thirds principles and thereby lowering the country's wage bill in Parliament and County Assemblies.

## 3. TO THE REGISTRAR OF POLITICAL PARTIES

The office of the RPP has wide powers in the regulation of political parties and consequently great influence to ensure gender responsiveness of party structures and processes. Based on the findings in this audit, the office of the RPP is urged to implement the following recommendations:

- ✓ Conduct an audit of the membership of political parties to verify their authenticity and, therefore, compliance with the gender representation rule. The audit should verify the office holders of the party governing bodies and satisfaction of gender representation at this level, as well.
- ✓ Enhance monitoring of political parties and withdraw registration from parties that are in

violation of the legal requirements on gender representation or other provisions.

- ✓ Develop additional guidelines to provide guidance to political parties on positive measures they can take to include women. In this regard, the RPP could develop a tool or a facilitative checklist that would guide parties in the development of a party's affirmative action policy.
- ✓ Develop guidelines on the Political Parties Fund and in particular the utilization of at least 30% of the fund which is envisaged for promoting participation in Parliament of women, youth, persons with disabilities and other minorities and marginalized groups. The office of the RPP should also put in place monitoring mechanisms to ensure that these funds are utilized as required by the Political Parties Act.

#### **4. TO THE KENYA NATIONAL POLICE SERVICE**

The police play a pivotal role in preventing (or protecting against) violence, as well as upholding various civil and political rights, which serves to encourage women's participation in political and electoral processes. Therefore, this audit recommends that the National Police Service take the following measures:

- ✓ The culture of police inaction must be quashed as it is the single most potent ingredient for the flourishing of impunity. Inaction is such that police receive reports of violation of various electoral laws and fail to act, make arrests, or conduct investigations for purposes of prosecution.
- ✓ Train police officers on electoral offences in order to enforce accountability for offences and fairness in the election environment.
- ✓ Train police on how to be more affable, less intimidating, and more responsive to the electorate in order to encourage reporting and enhance the principle of community policing.
- ✓ Develop regulations that take into account the provisions of the Public Order Act, the Bill of Rights, and regulations on the use of force.

### **C. STRATEGIC RECOMMENDATIONS**

This section outlines various strategic approaches and actions that need to be taken by targeted stakeholders in order to contribute to:

- ✓ Securing women's gains through faithful and generous implementation of the Constitution and other laws both at the county and national levels. Enhancing women's inclusivity and equal participation in electoral and political processes.
- ✓ Correcting injustices and eliminating obstacles that women have endured as they have pursued their civic and political rights.

Government and Parliament are strongly encouraged to look beyond the minimum requirements for the election and appointment of women to public office.

## 1. TO CIVIL SOCIETY

Civil society, and particularly women's rights organizations, has consistently played a pivotal role in expanding the space for women in politics and representation. The following recommendations are useful in pursuit of this objective:

- ✓ Undertake urgent advocacy measures and lobbying needed for the passage of the laws necessary to actualize the two-thirds principle of gender representation.
- ✓ Take an active role in advocating for electoral reform necessary to enhance democratic space and the inclusion of all.
- ✓ In their advocacy efforts, take advantage of constitutional provisions importing Kenya's international legal obligations into domestic law.
- ✓ Foster collaboration with duty bearers and undertake institutional strengthening programmes to enhance the institutions' abilities to be gender-responsive and inclusive.
- ✓ Develop and deliver capacity-building programmes aimed at enhancing the capacity of women legislators to be gender-responsive in lawmaking, lobbying, and consensus building.
- ✓ Exercise vigilance in monitoring compliance with constitutional and other legislative women's gains.
- ✓ React to and pursue action against threats to or violation of these gains through necessary measures, including public interest litigation and advocacy.
- ✓ Develop multi-faceted programmes aimed at increasing women's representation and leadership, including civic awareness campaigns about women's rights, and timely skills-building of women in preparation for leadership positions.
- ✓ Maintain consistent interaction among organizations in the pursuit of strategies and actions to enhance women's status and increasing the number of women in leadership positions in an effort to foster a culture of collaboration, avoid duplication of efforts, and develop new strategies and commitment to joint ventures.

## 2. TO THE NATIONAL GENDER AND EQUALITY COMMISSION

The National Gender and Equality Commission (NGEC) has a key oversight and facilitative role regarding the State's promotion of gender equality, inclusiveness, and protection from discrimination in accordance with the Constitution. To further enhance this function, FIDA Kenya recommends that the NGEC:

- ✓ Develop a comprehensive gender monitoring matrix tool to provide indicators of various gender stipulations required by various laws and policies and of state offices, public offices, independent institutions, elections, and appointments. This tool would:
  - Provide guidance to concerned duty bearers on the various gender considerations and requirements; and,

- Enhance stakeholders' monitoring ability in assessing the gender responsiveness of state actions and inactions and identifying gaps.
- ✓ Monitor continuously and meticulously compliance with the two-thirds gender rule of representation in elective and appointive positions. In particular, an urgent point of call is the legislative committees, particularly of the County Assemblies that now have sufficient numbers of women to ensure effective representation across all committees.

### 3. TO THE MEDIA

Media holds great influence in enhancing the perception of women's leadership. As such, the media industry, as a matter of social responsibility, should use its wide platform to boost the participation of women in the public sphere. FIDA Kenya recommends that the media take efforts to:

- ✓ Highlight gender issues that inform the public on the status of women in Kenya, their rights, their challenges, and their achievements.
- ✓ Ensure that reporting is balanced between men and women and gender-responsive by portraying how current issues markedly or disproportionately affect women.
- ✓ In light of women's historical marginalization, give women leadership a boost and fair advantage through consistent positive profiling of women leaders.

In addition, women leaders interviewed for this audit urged the media to be more sympathetic to the women's cause by emphasising the positive works of women, avoiding the repetition of negative stereotypes, and, on the whole, increasing coverage.

### 4. TO WOMEN LEADERS

Kenya now has the highest level of representation of women leaders since independence. At this crucial stage, women leaders (both elective and appointive) are urged to:

- ✓ Set and control the gender agenda in their various spheres of influence, including ensuring faithful implementation of constitutional women's gains and agitating for additional positive measures.
- ✓ Liaise and consult with civil society, particularly women's rights organizations that are multi-skilled and multi-resourced for provision of technical support, skills-building, strategy formulation, and advocacy.
- ✓ Display distinguished leadership by espousing the principles of leadership and integrity, as well as commitment to public service. In this effort, women leaders must be mindful of the unfair standard to which society holds women.
- ✓ Undertake to increase women's participation in leadership through unity of purpose among the current crop of women leaders and genuine mentorship of new or potential women entrants.

# APPENDIX

## APPENDIX 1 – LIST OF INTERVIEWEES

|  |  |
|--|--|
|  | Hon. Dr. Joyce Laboso – Deputy Speaker & Member of National Assembly, Sotik          |
|  | Hon. Esther Murugi – Member of National Assembly, Nyeri Town                         |
|  | Hon. Mary Emaase – Member of National Assembly, Teso South                           |
|  | Hon. Alice Wahome – Member of National Assembly, Kandara                             |
|  | Hon. Priscilla Nyokabi Kanyua – County Women Representative, Nyeri                   |
|  | Hon. Alice Chae - County Women Representative, Nyamira                               |
|  | Hon. Grace Jemutai Kiptui - County Women Representative, Baringo                     |
|  | Hon. Hellen Chepkwon - County Women Representative, Kericho                          |
|  | Hon. Fatuma Ibrahim Ali - County Women Representative, Wajir                         |
|  | Hon. Caroline Owen – Chief Whip for the Minority & Member of County Assembly, Kisumu |
|  | Hon. Emmaculate Musya – Member of County Assembly, Nairobi                           |
|  | Hon. Esther Mengere - Member of County Assembly, Nakuru                              |
|  | Jacinta Mwatela – Candidate for Governor, Taita Taveta                               |
|  | Naomi Cidi – Candidate for Senator, Kilifi   |
|  | Serah Kahiu – Candidate for Senator, Kiambu  |
|  | Rozah Buyu – Candidate for Member of National Assembly, Kisumu West                  |
|  | Connie Kivuti – Candidate for Member of National Assembly, Makadara                  |
|  | Sophia Abdi – Candidate for Member of National Assembly, Ijaara                      |
|  | Rukia Subow – Candidate for County Women Representative, Wajir                       |
|  | Juliet N. Makokha – Candidate for County Women Representative, Bungoma               |
|  | Mary Kimwele – Candidate for County Women Representative, Nairobi                    |
|  | Rosemary Gibson – Candidate for Member of County Assembly, Kiambu                    |



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# KEY GAINS AND CHALLENGES

## A GENDER AUDIT OF KENYA'S 2013 ELECTION PROCESS

Over 50% of the population of Kenya is comprised of women. However, the participation of women in the electoral process does not reflect this demographic reality. The reasons behind this disparity have complex historical and cultural elements, but ultimately have meant those women and the issues which affect them, have not been given their due focus in the priorities of politics and in building the nation since independence.

This publication highlights these disparities basing on findings conclusively derived from a gender audit of Kenya's 2013 general election process with the view of giving a clear picture of what transpired during the process and the lessons learned thereafter.