



CHARTER OF INCLUSION



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Glossary of Terms

- Abelism** : The conscious or unconscious bias, discrimination and social prejudice in favour of able bodied persons. It is hinged on the negative view that persons with disabilities are less valuable than non-disabled persons.
- Charter** : A formal document granting or urging from the sovereign power of a state certain rights or liberties.
- Civil Society Organisations (CSOs)** : Refers to non-state actors, not-for-profit, and voluntary entities formed by people in the social sphere separate from the State and the market. CSOs typify a wide range of interests and ties. They include non-governmental Organisations (NGOs), community-based organisations (CBOs) rights-based pressure groups, human rights campaigns in the society, and others that involve themselves in advocating for rights, clamouring for, and promoting the Constitution and governance in the country. Under the UN Guiding Principles, the definition of CSOs excludes business entities.
- Electoral Processes** : Processes that relate to an election include but are not limited to registering to vote, presenting oneself as a candidate, nomination of candidates, campaigning, voting, vote counting, announcement of results, and processing of election-related complaints and disputes.
- Equality:** : Having the same standing before the law (equal access, equal representation).
- Faith Based Organizations (FBOs)** : These are the diversity of faith-influenced (faith-financed) non-governmental Organisations that respond to societal ills including growing poverty, inequality, and social and political exclusion. They are critical in that they "connect" with the people and can translate complex discourses (such as causes of structural inequalities) into understandable practices and hence can shape development outcomes.
- Inclusivity** : Includes or considers as "part of" all people, regardless of their (socio-cultural, gender, age, political status, etc) differences, and treats them all fairly and equally.
- Marginalised and Minority Community** : A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole; (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or (d) pastoral persons and communities, whether they are: (i) nomadic; or (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;^[1]

[1] Constitution of Kenya 2010

- Marginalised groups:** : A group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27 (4) i.e., race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language, or birth. ^[2]
- Persons with Disabilities** : A person with a physical, sensory, mental, or other impairment, including any visual, hearing, learning, or physical incapability, adversely impacting their social, economic, or environmental participation. ^[3]
- Political processes:** : These relate to formulating and executing public policy, which involves the interaction of public institutions and social groups or between political leadership and the public.
- Youth** : The collectivity of all individuals in the Republic who have attained the age of eighteen years; but have not attained the age of thirty-five years.

[2] IBID

[3] IBID

1.0 Introduction

GOAL

To contribute to the building of a just, inclusive and democratic society, founded on an informed and empowered citizenry who are drivers of transformative change.

1.1 Understanding the charter of inclusion

This Charter of Inclusion (COI) is a formal document urging state and non-state actors to adhere to the Constitutional rights, entitlements, and liberties of women, youth, and persons with disabilities to promote inclusion in the electoral, political and governance processes in Kenya. The overall goal of the charter is to contribute to the building of a just, inclusive and democratic society, founded on an informed and empowered citizenry who are drivers of transformative change. The charter seeks to ensure inclusion as part electoral integrity.



a formal document urging state and non-state actors to adhere to the Constitutional rights, entitlements, and liberties of women, youth, and persons with disabilities to promote inclusion in the electoral, political and governance processes in Kenya.

1.2 Aim and purpose of the Charter of Inclusion

The main aim of the COI is to provide a standardised approach to advocate for the adherence to Constitutionalism and specifically the right of representation and participation of women, youth, and persons with disabilities in leadership and governance in Kenya. It documents practical and effective approaches that target institutions of governance to establish legally binding obligations to enforce the provisions of inclusivity and equality as enshrined in the Constitution and other legally binding laws. The COI also calls on state and non-state actors to represent a wide range of political perspectives and coverage.

AIM

To provide a standardised approach to advocate for the adherence to Constitutionalism

1.3 Objectives of the Charter of Inclusion

1. To document salient calls targeting state and non-state actors that would strengthen political participation of Women, Persons with Disabilities (PWDs) and youth - pre, during, and after the 2022 general elections and how they can cooperate towards the common agenda of achieving inclusivity and equality in electoral and political processes.
2. To document commitments from women, youth and PWDs that would facilitate their participation in the political and electoral processes. The COI will be a rallying call/ mobilisation tool for these groups to defend their rights.
3. To provide for a standardised approach to advocacy for civil society and other actors, to urge the adherence to constitutionalism and ensure gender equality and inclusion in leadership and governance structures in Kenya.
4. To provide a framework for implementing inclusivity and equality principles with specific actions, indicators of action, and targets.

1.4 Context of the Charter of Inclusion

Globally, women, youth, PWDs and marginalised communities continue to be disenfranchised based on laws, practices, or the absence of appropriate infrastructure that would facilitate their inclusion in electoral and political processes. Kenya is a signatory to various international and regional conventions and treaties which provide for the inclusion of minority and marginalised communities in politics, leadership and governance. These include the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights (ICCPR, 1966) that obligates state parties to ensure equal rights of men and women to enjoy civil and political rights; The African Charter on Human and Peoples' Rights (2003) that commits state parties to take specific positive action to

promote equal participation of women in the political life of their countries, including through affirmative action; and The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) that similarly compels state parties to take appropriate measures to eliminate discrimination against women in the political and public life of the country and ensure to women, 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. The Constitution of Kenya promulgated in 2010, spells out the aspirations of the Kenyan people for an inclusive government. For example, Article 10 (2)(a) provides for National Values and Principles of Governance (NVPG) which include patriotism, national unity, sharing

and devolution of power, the rule of law, democracy, participation of the people, human dignity, equity, social justice, **inclusiveness**, equality, human rights, non-discrimination, and protection of the marginalised. Article 27 (1) and (3) provides that every person is equal before the law and has the right to equal protection and equal benefit of the law; and that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres. Article 27(6) and (8) provide that the state must take legislative, policy and other measures, including affirmative action to redress the marginalisation of previously marginalised groups and in addition to those measures, ensure that there shall be not more than two thirds of any gender in elective and appointive public bodies.

The aspirations for an inclusive government is also contemplated in Article 38 on political rights and Articles 54, 55, 56, 81(b) and (c) and 100. Article 54 provides for PWDs rights to reasonable access to all places, public transport, and information; rights to use sign language, braille, or other appropriate means of communication, access to materials and devices and progressive implementation of the principle that at least 5% of the members of the public in elective and appointive bodies are persons with disabilities. Article 55 provides that the state shall take affirmative action programmes to ensure that the youth have opportunities to associate, be represented and participate in political, social, economic and other spheres of life. Article 56 provides that the state shall implement affirmative action programmes designed to ensure that minorities and marginalised groups participate and are represented in governance and other spheres of life. They are provided with special opportunities to access employment, education and economic fields.

81(b) and (c) provides that the electoral system should comply with the principle that not more than two-thirds of the members of elective public bodies should be of the

same gender and for the fair representation of persons with disabilities in elective public office. It also provides for fair representation of PWDs. In addition, Article 100 provides that the parliament shall enact legislation to promote the representation in parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities.

Despite the above progressive clauses in the Constitution, the aspirations for an inclusive government have not been realised going on 12 years after the 2010 promulgation, as of this year, 2022. In the political processes, the current statistics show that the overall success rate for women candidates in the 2017 general elections remained similar to 2013 at 13%, despite having the legal instruments in place. In 2017, 1,333 (11 per cent) of the 12,188 contenders – not including Women Members of the National Assembly (WMNA) – in the party nominations were women.¹ Out of the 1,862 elected persons for the six elective seats, women comprised 172 (9.2%) of the total suggesting that the more women present themselves during party nominations, the higher the chances of being elected.

Additionally, no woman, youth, or PWD was elected as a president nor nominated as a deputy president. Only three (6%) women were elected as governors out of 47 governors; only three (6%) women were elected as senators out of 47 senators; only 23 (8%) women were elected as Members of the National Assembly out of the 290. Similarly, only 23 were elected to the National Assembly for the youth, two of those being female. Only 96 (7%) women were elected as Members of County Assembly (MCAs) out of the total 1,450 MCAs elected; On the overall participation in the election, out of 12,454 candidates who were cleared to vie for the six elective positions in the 2017 general elections only 3,693 (29.67%) were below 35 years² while only 29 (0.2%) had a disability. Also, among the 77 registered parties in Kenya who participated in the 2017 general elections, only six fielded more than ten women as aspirants during their nominations.

¹NDI/ FIDA –K Gender report of the 2017 General elections, p.29

²The legal cut-off age for inclusion as a "youth" in Kenya.



29.67%

Candidates under 35 years cleared to vie for elective position in 2017 General Elections

0.2%

Candidates with disability cleared to vie for elective position in 2017 General Elections



ONLY 6

out of 77 registered parties in Kenya who participated in the 2017 fielded more than ten women as aspirants during their nominations

At the County Assembly level, 12 counties did not elect any women into their county assembly in 2017. These counties included: Kwale, Garissa, Wajir, Mandera, Isiolo, Embu, Kirinyaga, West Pokot, Samburu, Elgeyo Marakwet, Narok and Kajiado.³ The affirmative action mechanism provided in Article 177 (b) to ensure the achievement of the 33.3 per cent of women in county assemblies involves topping up the extra numbers of women through nominations using party lists. Even with this mechanism in place, some counties still failed to reach the Constitutional threshold.

Numerous attempts through parliament and judicial means to realise the Constitutional and legal provisions on representation have not been fruitful; There have been numerous court orders including a dissolution order for Parliament's failure to enact the necessary legislation to implement the Constitutional provisions and a court ruling in the Constitutional Petition No. 19 of 2017, where IEBC was compelled to ensure that political parties adhere to the 'not more than two-thirds' gender principle during party nominations and other party processes. The country is headed to the third general election since the promulgation of the 2010 Constitution with no mechanism for realising the anticipated inclusion of women in the elective and appointive positions.

The 2019 Housing and Population Census shows that 24,014,716 (50.49%) are women while men comprise of 23,548,056 (49.51%)⁴. The youth population (18-34 years) constitute 13,777,600 (29%)⁵ while 2.2% of the population (2019 census) are persons with disabilities⁶. There cannot be sustainable development if these populations are ignored and therefore their meaningful involvement in political, social and economic development is paramount.

Whereas the calls in this charter are made to specific institutions, they are not to be treated as mutually exclusive. Implementation will require collaborative efforts by all actors targeted by this Charter.

³IBID

⁴KNBS (2019). Population and Housing Census Report; Vol. 2

⁵IBID

⁶Institute of Development Studies (Disability Inclusive Development: Kenya Situational Analysis (June 2020 to date).

Finally, inclusion must be recognised as a measure of credibility of the electoral, political and governance processes in the country. Citizen rights provided under Articles 27(8), 30, 38, 10, 33, 35, 3 and 81(b) and (c) and 100 are being curtailed by technicalities, thereby skewing the system favouring a few elite and further marginalising the majority and entrenching inequalities.

THEREFORE, We the women, youth, PWDs and other marginalised communities:

RECOGNIZING our inalienable human rights as contained in the Bill of Rights in chapter four of the Constitution of Kenya 2010, to participate in electoral, political and governance processes in Kenya;

ACKNOWLEDGING the Constitution of Kenya, that we gave ourselves, and its aspirations for the rule of law and a more inclusive society;

CONSCIOUS of the legal provisions and affirmative action efforts that have been put in place to advance the inclusion and political participation of women, youth, PWDs and marginalised communities;

AWARE that women, youth, PWDs, minorities and marginalised communities continue to be disenfranchised and excluded from meaningful participation in electoral and political processes;

COGNISANT that legal instruments are insufficient on their own to realise gender parity and inclusion in public, political and governance processes and the need to have collaborative efforts of state actors including the National Assembly, the Senate, County Assemblies, Ministries, Departments and Agencies of government, the Attorney General (AG), National Police Service (NPS), Independent Electoral and Boundaries Commission (IEBC), National Gender and Equality Commission (NGEC), Office of the Registrar of Political parties (ORPP), Media Council, Political Parties (PP), Judiciary, National Cohesion and Integration Commission (NCIC), Office of the Director of Public Prosecution (ODPP) and non- state actors such as Organisations of Persons with Disabilities (OPDs), Faith Based Organisations, Women's Rights Organisations (WROs), Youth Serving Organisations (YSOs), Civil Society Organisations (CSOs) and the Private Sector to ensure inclusivity;

COMMITTED to the full realisation of the aspirations of the Constitution to achieve gender equality and inclusion in governance positions

Make the following **CALLS** and **COMMIT** ourselves to this charter as follows:

“

Every person is equal before the law and has the right to equal protection and equal benefit of the law”

Constitution
of Kenya, 2010

”

2.0 Calls to state actors

2.1 Calls to the Independent Electoral and Boundaries Commission (IEBC)

a). Voter registration:

Article 88 of the Constitution establishes the Independent Electoral and Boundaries Commission (IEBC) and provides for its mandate, including continuous citizens' registration as voters. The marginalised groups (women, youth, PWDs), and minority communities have noted that as much as the IEBC register has information

on age and gender, it lacks disaggregation of data to indicate registered voters who have a disability it lacks credibility. It is impossible to generate statistics on the registration rates for PWDs, thus impeding efforts for their inclusivity and especially to make necessary accommodations for their diverse needs.

Therefore, we urge that:

1. The IEBC provides a Register of Voters that is disaggregated by the disability status of voters and gender, age, polling stations, and other appropriate parameters.
2. The IEBC provides timely public information in an accessible format for PWDs regarding the inspection of the Register of Voters for the 2022 General elections.
3. The IEBC completes the audit of voters register on time and that corrective measures are undertaken to address any emerging anomalies therein.
4. The IEBC provides a credible register that does not disenfranchise anyone.
5. That IEBC provides a mechanism for automatic registration of a Kenya citizen as a voter once they attain the age of 18 years.

b). Party nominations:

Article 88 (d)(e) provides that part of the mandate of the IEBC is to regulate the process by which parties nominate candidates for elections and the settlement of the electoral disputes relating to or arising from party nominations. IEBC stated that political parties should submit names of candidates, date and venue of party nominations 13 days to the deadline of the nominations and 120 days to the general elections. The political parties are required to submit party lists to the Commission 44 days to the elections. IEBC also directed that parties solve intra-party disputes

on or before the final day of the nominations which is 108 days to elections. On or by the same day, the parties are to submit names and signatures of officials who will be certifying to IEBC persons who were duly nominated. Parties are to submit the names of persons selected to contest in the general elections on or before 103 days to the general elections. The political parties must submit party lists to the Commission 44 days to the general elections. We, the women, youth and PWDs still have memories of the chaotic party nomination for 2017 general elections. The nominations

were marred with violence that hindered the effective participation of marginalised groups and minorities. The political parties also failed to nominate members of marginalised groups and marginalized communities in their stronghold areas to facilitate their elections⁷. Political parties have utilised diverse nomination procedures designed to exclude women and defraud them their nomination fee paid.

Independent candidates are on the other hand expected to submit to IEBC a clearance certificate from the ORPP confirming that one is not a member of any registered political party and the symbols they intend to use in the general elections 98 days to the elections. IEBC should thereafter gazette the names and symbols of persons intending to contest in the election as Independent Candidates 87 days to the elections.

Therefore, we urge that:

1. The political party nomination rules be made public well before the nominations exercise to ensure all aspirants are clear about the rules of engagement and that the nomination exercise can be measured against each party's rules and that the ORPP and IEBC make public each participating party's nomination rules on their website
2. The IEBC ensures that the political parties' nomination rules and the parties' code of conduct are complied with
3. The IEBC and the ORPP ensures equitable and transparent party nomination processes
4. The IEBC as a commission with the obligation to adhere to the Constitution, enforces the 'not more than two-thirds' gender principle for the electoral processes
5. The IEBC rejects party nomination outcomes that do not meet the 'not more than two-thirds' gender rule
6. The IEBC makes public the approved nomination rules for all political parties participating in the electoral process
7. The party lists that IEBC publishes on its website must match those published on the respective political parties' websites
8. The IEBC shall publish as required by law, the formula that will be used to fill nomination seats as prescribed in Article 90 of the Constitution
9. The IEBC waive nomination fees for PWDs candidates.

⁷NDI/ FIDA (Gender Audit of the 2017 General Election

c.) Campaign financing:

Article 88(4)(i) of the Constitution mandates the IEBC to regulate the amount of money that may be spent by or on behalf of a candidate or party in respect of any election. The Election Campaign Financing Act (No. 42 of 2013) to operationalise Article 88(4)(i) of the Constitution has never been implemented due to a lack of regulations. In 2013, the National Assembly did not enact the Election Campaign Financing Regulations submitted to it by the IEBC. Instead, it amended section 1A of the Elections Campaign Financing Act to provide that the Act shall come into force immediately after the 2017 General Elections. In August 2021, the National Assembly Committee on Delegated legislation voted to nullify the Elections Campaign Financing Regulations proposed by IEBC citing that it was time-barred.

The lack of regulations to operationalise the Elections Campaign Financing Act, 2013 undermines political and electoral equality of opportunity, accountability and transparency in the electoral campaigns. At the same time, refusal to regulate campaign financing has skewed the electoral process making it more of a money contest and the preserve of the monied elites, many of whom are able-bodied men. It perpetuates marginalisation and exclusion of others, contrary to the very spirit of the Constitution which enshrines fairness and inclusion as a cardinal principle in electoral and governance processes. PWDs, women and youth, being on the disadvantaged side of the economic scale, have less capacity to leverage financing and are therefore out matched by their male counterparts shilling for shilling. It exposes both the legislature and executive to manipulation by various interests who can clandestinely finance their electoral participation. It therefore impairs the pursuit of Article 6 provisions on leadership integrity and hinders the emergence of an inclusive new and dynamic leadership. and dynamic leadership.

Therefore, we urge that:

1. The IEBC exercise its independence and implement the Election Campaign Financing Act 2013;
2. The IEBC MUST demonstrate its independence in implementing all the regulations that would secure a legitimate, accountable, free and fair election.
3. The IEBC as the user institution should be allowed to exercise their independence and draw their budget against their operational plans directly from the exchequer through the consolidated fund without undue influence from parliament who have an interest in the implementation of laws and regulations on the elective process.



D). Electoral code of conduct and elections offenses act no.37 Of 2016:

The second schedule of the Elections Act, 2011 provides for the electoral code of conduct that aims to promote conditions conducive for the conduct of free and fair elections; a climate of tolerance where political activities take place without fear, coercion, intimidation, and reprisal; provides a commitment of political parties to promote gender equality, ethnic tolerance, fair representation of marginalised groups and refrain from actions of violence

and intimidation. The Elections Offenses Act No. 37 of 2016 enumerates various offenses, including breaching the electoral code of conduct and its repercussions. We the marginalised groups and the marginalised communities are aware that IEBC did not enforce the electoral code of conduct and the elections offenses act effectively in previous elections as the Commission lacked clear rules, procedures, and consistency in the application of the law⁸.

Therefore, we urge that:

1. The IEBC strictly enforces the electoral code of conduct.
2. The Commission liaises with the Inspector General of Police (IGP) and the Office of the Director of Public Prosecution (ODPP) to ensure that those who are accused are investigated and if found guilty are prosecuted immediately
3. IEBC institutes immediate action against individuals, political leaders or political parties that perpetrate violence or support the perpetration of violence against women, youth and PWDs contrary to the code.
4. The IEBC sanction political parties, their members or candidates who engage in violence of any kind and especially violence

targeted at members of marginalised groups, including zoning areas for specific parties or candidates as this is a violation of citizens political rights as enshrined in Article 38; sanctions should also include barring the party and or candidate who engages in any kind of violence from participating in that election and the party from fielding a candidate in the area where the offense has occurred

5. IEBC monitors and sanctions individuals and political parties engaging in all electoral violence either physical, verbal, print, or other media within the Republic, including those from party members residing in the Diaspora.

e). Voter education:

The Constitution of Kenya Chapter 7(1) mandates the IEBC to establish an electoral system that complies with the following principles: Freedom of citizens to exercise their political rights under Article 38; not more than two-thirds of the members of elective public bodies shall be of the same gender; fair representation of persons with disabilities; universal suffrage based on the aspiration for fair representation and equality of vote; and free

and fair elections, which are by secret ballot; (ii) free from violence, intimidation, improper influence or corruption; (iii) conducted by an independent body; (iv) transparent; and (v) administered in an impartial, neutral, efficient, accurate and accountable manner.

We the marginalised groups and marginalised communities have noted that IEBC voter education materials are currently available in

⁸ELOG(2017). The Elections observation report

English, Kiswahili, and braille. However, there are no (audio) materials available for voters with hearing disabilities, hence excluding them from accessing this vital information.

Further, most IEBC materials are aired on television, especially during prime time 7.00 pm and in English, while most women may not be available due to conflicting reproductive

gender roles (preparation of food for the family and supervision of school-going children). Women therefore are inadvertently denied access to this information. Towards this end, Article 88 calls for the IEBC recruit competent electoral officials while (4) mandates the IEBC undertake a comprehensive continuous voter awareness and education.

Therefore, we urge that:

1. The IEBC undertakes inclusive and continuous voter awareness and education that comprehensively targets all marginalised groups and marginalised communities
2. The IEBC's voter education MUST embrace all media and voter education materials and MUST be accessible⁹ to all, regardless of literacy levels, social and disability status. Expressly, voter education IEC materials should be equally provided in braille, large print, Kenyan sign language and audio during voter education sessions
3. The IEBC develop and apply the most effective media for continuously educating the voters among marginalised groups and minorities, guided by its core values
4. The IEBC partners with Organisations for persons with disabilities (OPWDs) and other Civil Society Organisations (CSOs) to produce and distribute accessible civic and voter education materials
5. The IEBC recruited officials must be inclusive of all the marginalised groups especially the PWDs
6. IEBC must ensure the security of all their officials throughout the electoral process.



Photo Credit: Ankara

⁹Accessibility includes timing the education/dissemination sessions in such a way that all gender groups have equal opportunity to be reached.

F) Training and engagement of election officials

The IEBC recruits and trains electoral officials to, among other things, oversee efficient and effective management of elections in line with its mandate. The Commission must understand and communicate effectively to the voters and facilitate their participation in the electoral processes. In this regard, IEBC officials must understand and appreciate the various challenges facing the voters, especially those with multiple disabilities, including psycho-social disabilities, to provide the physical or technical support they may need.

Therefore, we urge that:

1. The hiring, training and deployment of election officials at all levels of IEBC must reflect inclusion in observance of a state institution's constitutional and legal requirements. The IEBC comprehensively trains the secretariat, support staff, partners and volunteers on disability sensitivity and inclusion
2. The IEBC develops an inclusivity marker tool to ensure that all aspects of inclusion are adhered to in the training and engagement of electoral management officials
3. IEBC officials must include those who can communicate to PWDs with different disabilities (audio, visual etc). Voters MUST be given options on how to communicate and participate in voting

g) Voting

The Constitution requires that administrative arrangements for the registration and conduct of elections be designed to facilitate and not deny an eligible citizen the right to vote or stand for elections. Furthermore, the Convention on the Rights of Persons with Disabilities requires that state parties ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, among other things, by ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.

Therefore, we urge that:

1. The IEBC provides special support to Persons with Disabilities to access polling stations on election day, including support to the visual, psycho-social and hearing impaired
2. The IEBC identifies trains and recruits women, youth and persons with disabilities as election officials and further ensures the inclusion of marginalised communities
3. IEBC develops an inclusion marker tool (gender, age, disability status) to ensure that all aspects of inclusion are adhered to in the engagement and training of electoral management officials.

2.2 Calls to the office of the registrar of political parties

A). Management of political parties and coalitions:

Section 10 of the Political Parties Act, 2011 provides for the formation of coalitions before or after elections. The Political Parties Amendment Act, 2022 provides for the registration of a coalition as a political party. A coalition political party is required to submit a coalition agreement to the ORPP at least 120 days before general elections while political parties wishing to form a pre-election coalition are expected to deposit the agreement with the ORPP at least three months before the general elections. Schedule 3 of the Political Parties Act, 2011 provides for the basic requirement for a coalition agreement that includes the governing structure; overall structure of the coalition, a formula for sharing positions, nomination rules, policy initiation, and decision-making processes. We the marginalised groups and marginalised communities have noted with dismay that the proposed leadership structures of the current coalitions and coalition parties are not inclusive.

Therefore, we urge that:

1. The ORPP does not register any political party, coalition or coalition party that does not adhere to the 'not more than two-thirds' gender principle in its governance structures
2. The ORPP does not register any political party, coalition or coalition party that does not have fair representation as constitutionally required of youth, women and PWDs in its governance structures.

b). Party nominations:

Section 2(c) of the Political Parties Act, 2022 amendment Act provides for direct and indirect nomination processes through which individual parties or a coalition party select candidates for the general election. According to the IEBC calendar, political party nominations will be conducted at least 108 days to the general elections. Political parties should submit their membership list to ORPP at least 134 days to the general elections which is at least 14 days before submission of the membership lists to IEBC, which should be done at least 120 days to the general elections. A political party should request the registrar for a certified party register at least 21 days before the party nominations exercise. The registrar is supposed to provide the party with the certified register within seven days of this request. Political parties are required to adhere to party nomination rules that were submitted to the IEBC. The political parties Act, 2011, provides that parties use the certified party membership lists to conduct nominations; share information with the registrar about the date, venue, procedure to be used for the nomination, and list of aspirants at least ten days before the date of the nominations. Political parties are also required to share the list of delegates involved in conducting indirect party nominations at least seven days before the nominations day. The same information should be available on the parties' websites.

Therefore, we urge that:

1. The ORPP enforces the adherence to party nomination rules during party nominations
2. Political parties meaningfully engage youth, women, PWDs and marginalised communities as delegates, during consensus building, opinion polls and other indirect party nominations procedures.

c). Party lists:

Section 35 of Elections Act, 2011 read together with Section 20 of the parties and party-list regulations of 2017 provides that party lists should contain the names of all the persons who would stand elected if the party were to be entitled to all the seats available under Articles 97(1)(c), 98(1)(b), (c), (d) and 177(1) (b) and (c) and shall alternate between male and female candidates, prioritising persons with disabilities, the youth and any other candidate representing the marginalised groups. The law provides that disputes from the party list should be heard and determined by the

Political Parties Dispute Resolution Tribunal (PPDT). The lists should be submitted to the ORPP 58 days to the elections; and to the IEBC 14 days later; which is 44 days before the general elections. The marginalised groups and marginalized communities have noted the violation of section 28 (2) of the elections act that while the Commission is required to publish the party lists as received by all parties, this was not the case. There were also cases where the party list did not comply with the law.

Therefore, we urge that:

1. ORPP audits and rejects party lists that do not adhere to the principle of inclusion.

D). Enforcement of the political party's code of conduct:

The first schedule of the Political Parties Act, 2011 provides for the Code of Conduct for political parties. Part of the code includes development and implementation of measures for the progressive realisation of representation and participation of marginalised groups in decision-making; implementation of affirmative action programmes, policies and strategies to give effect to Article 27(6) of the Constitution, promote gender equality, equity, human rights, and inclusiveness.

The marginalised groups and marginalized communities are disturbed by the blatant

violation and fraudulent application of the political parties' code of conduct during the previous general elections that saw under-representation of marginalised groups in party nominations and as candidates. For example, out of 12,188 contenders during party nominations in 2017 only 11% were women¹¹; among the 77 registered political parties in 2017, only six fielded more than 10 women as aspirants during their nominations; Out of 14,523 candidates who were cleared to vie for the 6 elective positions in the 2017 general elections only 3,693 accounting for (29.67%) were youth¹²; while 29 (0.2%) had a disability¹³.

Therefore, we urge that:

1. ORPP enforces political parties' code of conduct to enhance inclusivity and improve the outcomes of women, youth, and PWDs in the party nomination process and after the elections (for appointive positions)
2. All political Parties MUST sign a commitment pledge for ethical conduct during elections including promoting peaceful political processes.

¹¹NDI/ FIDA –K Gender report of the 2017 General elections

¹²Youth Agenda (2017). Report of the Youth Electoral participation in 2017 General Elections; Quick Facts

¹³UDPK (2017). A post-2017 general elections Audit report on the participation of PWDs in the 2017 General Elections

e). Allocation and use of political parties fund:

Section 7(2)(b) of Political Parties Act (2011) and Section 25 of the Political Parties Amendment Act, 2022 requires that a political party or a coalition political party need to have diversity and gender balance to meet the condition of full registration to benefit from the fund. These requirements include that not more than two-thirds of either gender should be members of a governing body and that 15% of the political parties fund should be distributed based on the number of marginalised groups' candidates that a party will elect during a

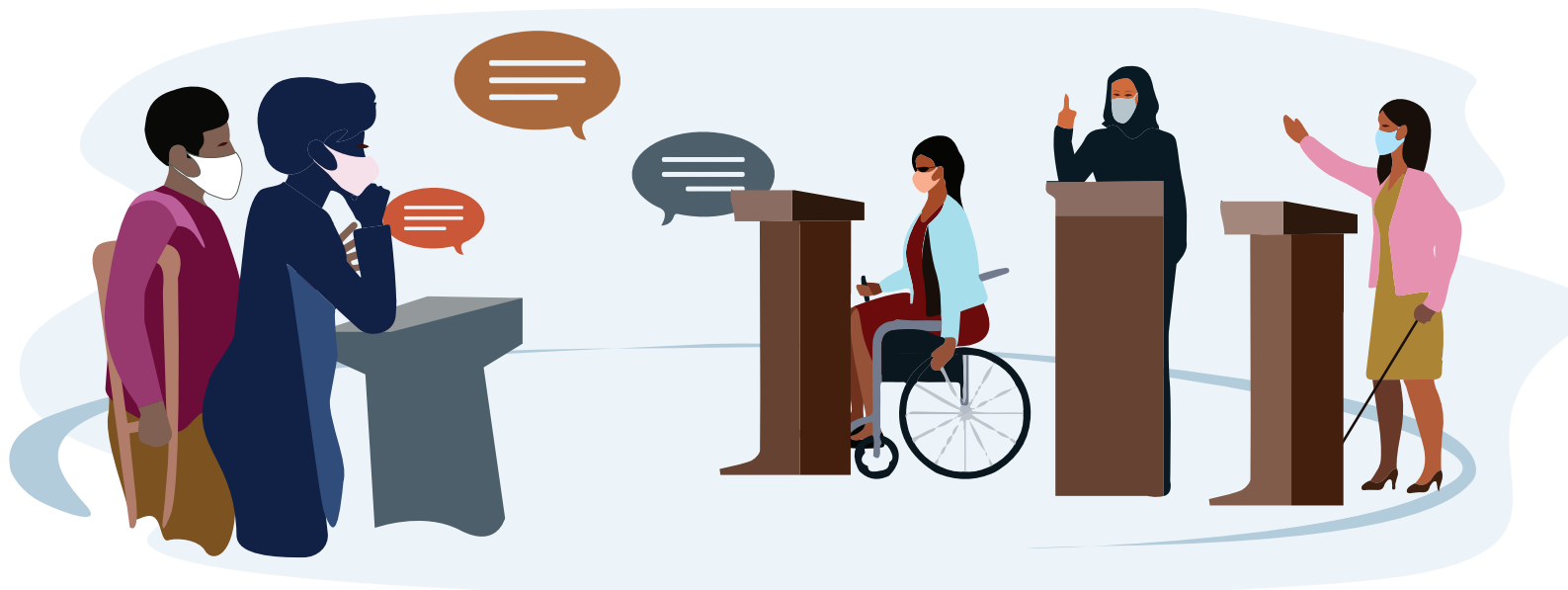
general election. Section 26 (a) of the PPA, 2011 provides that at least 30% of funds received by political parties should be used to promote the representation in Parliament and in the county assemblies of women, youth, PWDs, minorities and marginalised communities. We the marginalised groups note with grave concern that none of the political parties that received the political parties fund adhered to the requirement to use the fund to advance representation of women, youth and PWDs in Parliament or county assemblies¹⁴.

Therefore, we urge that:

1. The Office of Registrar of Political Parties enforces the requirement that only parties that comply with these requirements on diversity and gender balance during the next general elections shall benefit from the 15 per cent Political Parties' Funds
2. ORPP audits and holds political parties accountable in promoting the representation of marginalised groups and marginalised communities in parliament through the Political Parties' Fund. Parties that do not comply and there is evidence from the auditor general report, should be penalised and not receive the 30% of
3. ORPP audits the use of Political Parties funds allocated to ensure that Political parties budgeting includes and (where already in place,) increases the expenditure for programmes targeting the marginalised groups (women, youth, PWDs), and marginalised communities

¹⁴ Political Parties' Utilisation of the Political Parties' Fund to Promote Political Participation of Marginalised and Minority Groups in Kenya

¹⁵WFD (2020). The State of Political Inclusion of Persons with Disability (PWDs) within Political Parties in Kenya.



2.3 Calls to the political parties

a). Compliance to principles of democracy:

Article 91 of the Constitution provides that political parties shall abide by the democratic principles of good governance, practice democracy, respect the right of all persons to participate in the political processes including minorities and marginalised groups, promote gender equality and equity. Article 81(b) and (c) mandates that the electoral process must have deliberate mechanisms to institutionalise inclusion strategies for women and PWDs, and institute codes of conduct that commit them to elections that are free from violence. The Constitution in Article 27 on inclusion and non-discrimination requires that leadership and decision-making positions, including electoral and political processes, must include youth, women, and PWDs in mainstream structures¹⁵. Whereas Political parties have created structures to operationalise the inclusion for these three categories of marginalised groups, we have noted with concern that the

Women, Youth and PWD Party Leagues within political parties have continued to receive tokenistic support during elections, while remaining largely inactive during the intra-election phase.

PWDs are not a homogenous group upon whom generalisations can be made. They have diverse personal factors with differences in age, gender and socioeconomic and cultural status that impact their marginalisation in electoral, political and governance processes differently. The UN High Commissioner for Human Rights noted in 2011 that "persons with psycho-social and intellectual disabilities continue to be deprived of their right to vote and to be elected, due to Constitutional or legal provisions that link their political right to legal capacity" and that "the electoral management bodies have not appreciated an adequate understanding of how to implement the rights of PWDs in elections"¹⁶.

¹⁵ WFD (2021). Including People with Disabilities in Kenyan Political Parties on the road to 2022 elections. See in [https://Including-people-with-disabilities-in-Kenyan-political-parties-on-the-road-to-2022-elections-|Westminster-Foundation-for-Democracy-\(wfd.org\)](https://Including-people-with-disabilities-in-Kenyan-political-parties-on-the-road-to-2022-elections-|Westminster-Foundation-for-Democracy-(wfd.org))

¹⁶ KNCHR (2014). From Norm to Practice. A Status Report on Implementation of the Rights of Persons with Disabilities in Kenya.

¹⁷ As defined in the Constitution and in the PWD Act Chapter 133 of 2012. See [https://Kenya-Persons-with-Disabilities-Act-Disability-Rights-Education-&-Defense-Fund-\(dredf.org\)](https://Kenya-Persons-with-Disabilities-Act-Disability-Rights-Education-&-Defense-Fund-(dredf.org))

Therefore, we urge that:

1. All registered political parties must provide in their list of members, a verifiable list of PWDs. To stem further marginalisation of PWDs, accommodate persons with diverse disabilities (audio, visual, physical and albinism⁴⁷)
2. Political parties hold free, fair and transparent direct party nominations and polling to identify candidates, including making public the methodology used to arrive at candidates and all the parameters used in polling
3. Political party Election Boards must be credible and must adhere to the Constitutional principles of leadership and integrity
4. All political parties not meeting the threshold set in Political Parties Act, 2011 on inclusion of PWDs be barred from participating in all political processes and/or deregistered
5. All political parties align themselves to the Constitution concerning youth involvement and inclusion
6. All political parties MUST facilitate the political participation activities of women, youth and PWD leagues pre, during and post-election periods
7. The ORPP must censure members who contravene this pledge by taking the appropriate punitive action as described in the Political Parties Act (2016)
8. Political parties put in place deliberate measures that prioritise selection of PWD's through the party lists (especially in the gender list)
9. Political parties publish their nomination rules and calendar in accessible formats stipulating the date, venues, and other related information to their website ten days before the nomination day
10. Political parties use 'other measures' to guarantee that PWDs, youth and women get the information on nomination rules, calendar, date, venues and other relevant information
11. Political parties should accord a fair and timely hearing to anyone who presents an electoral dispute, (especially youth, women, persons with disabilities and minority communities) and to ensure timely delivery of justice
12. Political parties MUST share policies, manifesto, Constitution, nomination rules etc transparently with persons with disabilities and other stakeholders
13. Political parties MUST develop strategic plans, budget and work plan that demonstrates the party's commitment towards inclusive leadership and governance.

b). Adherence to non-violence and security provisions:

The Bill of Rights guarantees the right to freedom and security of person, which includes the right not to be subjected to any form of violence from either public or private sources. Further to this Constitutional provision, the Elections Act 2011 requires that the IEBC observe the principle of free and fair elections, which are free from violence, intimidation, improper influence or

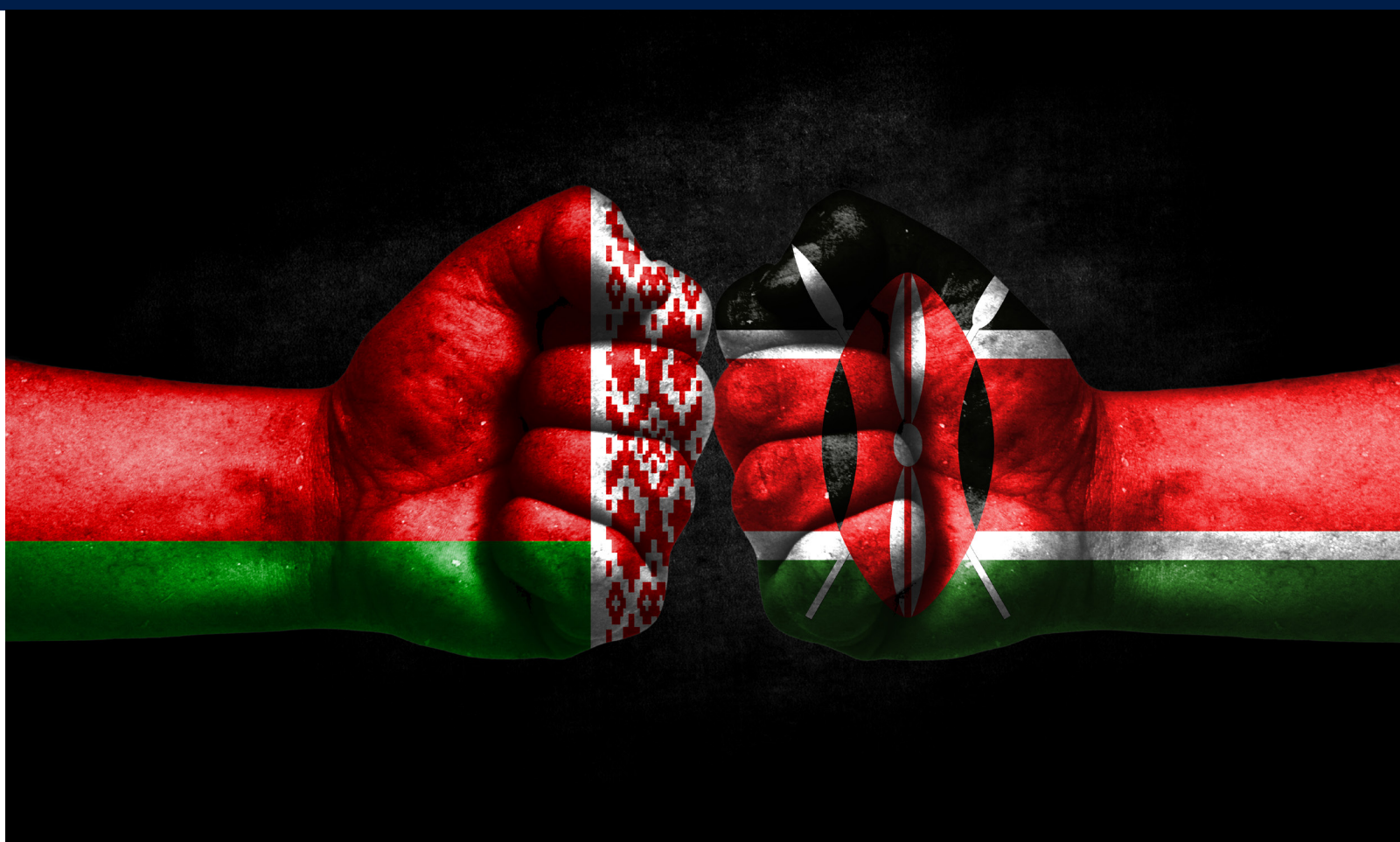
corruption. Additionally, the Election Offenses Act recognises as an electoral offense the use of threats, force, violence, or restraint for the purposes of compelling or deterring an individual or individuals from participating in the electoral process. The Electoral Code of Conduct also requires those bound by the code to (a) publicly and repeatedly condemn violence and intimidation and avoid the use of

hate speech, discriminative language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage, or for any other reason; (b) refrain from any action involving violence or intimidation; (c) 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.

We the marginalised groups recall with dismay the violence (both physical violence and discriminatory and abusive utterances) that has been meted out on women, youth and PWDs in past elections, with no consequences to the perpetrators. Even in the lead-up to the 2022 general elections, violence towards women is still a major concern.

Therefore, we urge that:

1. All Political parties commit to a zero-tolerance policy for hate speech, intimidation, and violence against women, youth and PWDs and hold party members and supporters accountable for violating the policy
2. Political parties host peaceful campaigns and political party events in accessible venues, facilities and provide the required reasonable accommodations for PWDs
3. Political parties expel members who are found culpable of perpetrating electoral violence and using discriminatory and abusive utterances against women, youth and PWDs
4. Political parties decentralise their internal dispute resolution mechanisms to the counties before party nominations so that women, youth and PWDs can easily access these for the fair and peaceful resolution of their nomination disputes
5. Political parties should provide security to all equally during party nominations.



2.4 Calls to the Ethics and Anti-Corruption Commission (EACC)

The Ethics and Anti Corruption Commission is established under section 3.1 of the Ethics and Anticorruption Act 2011 following Article 79 of the Constitution. Its mandate is to combat and prevent corruption through law enforcement, preventive measures, education, and promoting standards and best practices in integrity and ethics. The Commission investigates corruption in any government entity or agency except Parliament. We have noted that political parties favour popular candidates (usually male) against candidates from marginalised groups and marginalised communities for elective and appointive positions, irrespective of their integrity standing in contravention of Article 6 of the Constitution.

Therefore, we urge that:

1. That the Commission investigate and promptly prosecutes the practice of political parties compelling marginalised groups candidates to forgo their political seats through bribery or coercion
2. The Commission must not clear any candidate with integrity issues electoral and nominative positions.

2.5 Calls to the Political Parties Dispute Tribunal (PPDT)

Section 39 of the Political Parties Act, 2011 established PPDT with a mandate to hear and determine disputes between party members; between a party member and the party, between parties, between an independent candidate and a party, appeals from decisions of the registrar of political parties and disputes arising from party nominations. Section 38(b) of the Political Parties Amendment Act, 2022 provides that parties should establish mechanisms for resolutions of disputes arising from party nominations. If one is aggrieved, one should show evidence of

having attempted to resolve the issue by the political parties internal dispute resolution mechanisms. Political parties must settle all disputes within 30 days from the day of party nominations. The PPDT determines disputes arising from party lists within 30 days.

WE, The marginalised groups have noted that Political Parties Dispute Tribunals mechanisms are centralised at Party headquarters and costly, hence rendering the equitable access to justice void, especially for the marginalised groups and marginalised communities.

Therefore, we urge that:

1. PPDT decentralises its operations to accord all those who will be aggrieved after party nominations access to justice
2. PPDT accords a fair hearing to anyone who presents a dispute with any party, especially marginalised groups, to ensure timely justice delivery

2.6 Calls to the Judiciary

Article 159 of the Constitution provides that judicial authority is derived from people and exercised by courts and tribunals established under the Constitution. It also provides that in exercise of its judicial authority, the courts shall be guided by principles such as justice to all irrespective of status, justice shall not be delayed, and that the judiciary will not be subject to the control or direction of any person or authority. Article 20(5)(b) obliges the Court in applying rights under Article 43 to be guided by the principle that "in allocation of resources the state shall give priority to the widest possible enjoyment of the right and fundamental freedom having regard for prevailing circumstances

including vulnerability of particular groups and individuals". The Judiciary launched the Judicial Committee on Election (JCE) in August 2015 to facilitate the training and preparations by the judiciary in determining all election disputes and petitions. The judiciary plays a key role in the electoral process by ensuring timely dispensation of justice to those aggrieved. From the 2017 election we the marginalised groups and marginalised communities have noted that the threshold for determining a "credible election" was so low that only three of the 299 petitions resulted in a by-election, with most failing because they were time barred.

Therefore, we urge that:

1. Timely and cost-efficient conclusion of all election related petitions.

2.7 Calls to the Executive

Article 130 of the Constitution provides that the national executive of the Republic of Kenya is vested in the President, Deputy President and the Cabinet. Article 27 of the Constitution requires that the state takes legal and 'other measures' to ensure adherence to the 'not more than two-thirds' gender principle in elective and appointive bodies. We note with concern that in the formation of the cabinet, at the National level and the Counties, the executive has not adhered to this principle. Furthermore, the low representation of PWDs and youth is in clear contravention of the principles of inclusion. Representation at the Chief Administrative Officer and Principal Secretaries level falls short of the principle¹⁸.

Therefore, we urge that:

1. Presidential and gubernatorial aspirants publicly commit to adhering to the 'not more than two-thirds' gender rule in their manifestos and the appointment of their cabinets and other respective positions for appointments
2. Presidential and gubernatorial aspirants commit themselves to appoint of members from marginalised groups (women, youth and PWDs) and marginalised communities in their cabinets and other appointive offices.

¹⁸ Gender Scorecard Report on the 2017 Elections.



Photo Credit: Parliament of Kenya/BBC

2.8 Calls to the Parliament

Article 93 of the Constitution establishes the Parliament of Kenya that comprises the National Assembly and the Senate. The mandate of the National Assembly is to legislate, oversee the executive, represent the

citizen's interests in Parliament, and determine the allocation of the national revenue between the two levels of government and appropriate funds for the expenditure by the national and county governments.

a). Funding and financing the electoral process:

Article 88 of the Constitution of Kenya, 2010, details the Independent Electoral and Boundaries Commission (IEBC) functions. Further, IEBC's Act of 2011 requires that the Cabinet Secretary for Finance submit estimates approved by IEBC to the National Assembly for approval. The allocation of resources to the IEBC has to be done in keeping with public finance principles as articulated in the Constitution.

The marginalised groups and marginalised communities note with grave concern that allocations to the NCIC, IEBC, ORPP and other elections related commissions have consistently been late and low even when the budget is approved. Despite the very narrow timelines in the electoral calendar, Treasury further delays disbursing the funds, thus holding up the implementation of crucial activities that affect us.

Therefore, we urge that:

1. The National Assembly should respect and facilitate the independence of Constitutional commissions (NCIC, IEBC, ORPP and the Judiciary) to draw directly from the Consolidated Fund in support for free, fair and credible elections and the separation of powers
2. Treasury disburses finances allocated to the IEBC in alignment with the electoral cycle and on time.

b). Electoral reforms

Article 100 of the Constitution provides that parliament shall enact legislation to promote the representation in parliament of women, persons with disabilities, youth, and other minorities, and marginalised communities. We the marginalised groups and marginalised communities are appalled that as at now, twelve years since the promulgation of Constitution of Kenya 2010, the law contemplated in Article 100 has not been enacted. We also note with

concern that Kenya has not ratified the African Youth Charter (AYC) adopted on 2 July 2006 and entered into force on 8 August 2009. The Youth Charter guarantees youth participation in Parliament and other decision-making bodies following the prescribed laws. There is urgent need to have it ratified within the life of the current Parliament.

Therefore, we urge that:

1. The 13th parliament that will be in place after the August 2022 general elections enacts the law actualising Article 100, within one year of its term in office. (That is by August 27th, 2023)
2. Through the Ministry of ICT Innovation and Youth Affairs, the Government ratifies the Africa Youth Charter (AYC) by 31 May 2022.
3. The Government develops policies and strategies for the domestication of the Youth Charter.
4. The Government through the relevant ministry domesticates the key principles and values of The Conventions on the Rights of Persons with Disabilities (CRPD), and the African Disability Protocol on the Rights of Persons with Disability to enhance disability inclusion in Kenya's political institutions, including political parties.
5. No electoral law should be changed less than twelve (12) months to the General Election.

2.9 Calls to the Office of the Auditor General

The Office of the Auditor-General (OAG) is an Independent Office established under Article 229 of the Constitution of Kenya. The Office is charged with the primary oversight role of ensuring accountability within the three arms

of government (the Legislature, the Judiciary and the Executive) as well as the Constitutional Commissions and the Independent Office of the Controller of Budget.

a). Auditing public expenditure:

The Constitution requires the office of the Auditor General to audit and report on among others, the accounts of political parties funded from public funds. As political parties receive government funding to promote inclusion of marginalised groups and marginalised communities, it is imperative that the Office of the Auditor General audits their plans, budgets, and accounts to ensure that they adhere to legal requirements.

Therefore, we urge that:

1. The Office of the Auditor General interrogates for accountability from political parties in their utilisation of funds meant to promote inclusion of the marginalised groups and marginalised communities in Parliament and flag out all non-compliant parties
2. The OAG audits and interrogates all state actors within the electoral system to promote inclusion.

2.10 Calls to the Inspector General of Police (IGP)

Article 245 of the Constitution establishes the office of the Inspector General of Police in Kenya whose mandate encompasses investigating any violence (physical, verbal or otherwise as prescribed by law) or offences, and enforcement of the law. We the marginalised groups note with concern that violence (including Sexual and Gender Based

Violence-SGBV) has over the years become a sub-culture associated with electoral and political processes.¹⁹ This creates opportunities for manipulation, disenfranchisement and marginalisation, contrary to the enjoyment of citizens' freedoms and human rights.

Therefore, we urge that:

1. The Inspector General of Police swiftly investigate and prosecutes cases of Sexual and Gender-based violence (SGBV)/ Violence against Women in Elections (VAWE) and other all forms of violence during party nominations and campaigns, including cyber-bullying²⁰, misinformation and disinformation that is injurious to one's character
2. The Inspector-General of Police commits to promptly taking active measures to arrest and bring perpetrators of electoral violence to justice on Election Day
3. The Inspector General of Police commits to take active measures to arrest and bring to justice perpetrators of electoral violence against women, youth and PWDs during the campaigns and nomination period
4. The Independent Police Oversight Authority (IPOA) investigates and recommends for prosecution police officers that are complicit in perpetrating electoral violence against women, youth and PWDs.

2.11 Calls to the office of the Director of Public Prosecutions (ODPP)

The law requires that the Office of the Director of Public Prosecutions (ODPP) conducts timely and quality investigations to ensure that those who violate the electoral code of conduct are prosecuted. This includes all election related violations pre, during and after elections.

Therefore, we urge that:

1. The Director of Public Prosecution institutes court proceedings against those charged with electoral violence including police officers culpable.

¹⁹ NCIC, 2022. A violence free 2022. Elections Bila Noma Roadmap.

²⁰ Also referred to as "cyber-harassment" or "on-line bullying".



2.12 Calls to the National Cohesion and Integration Commission (NCIC):

NCIC is a statutory body established under the National Cohesion and Integration Act No.12 of 2008. Part of its core values includes affirmative action for the marginalised and the minorities, inclusivity and respect for diversity. The Commission is mandated to among other things, facilitate and promote equal opportunities, good relations, harmony and peaceful co-existence of different ethnic and racial communities and elimination of all forms of ethnic or racial discrimination and discourage persons, institutions, political parties and

associations from advocating or promoting discrimination. Further, the Commission is mandated to investigate on its own accord or on request from any institution, office, or person any issue affecting ethnic and racial relations. We have noted with concern that sporadic breaches of cohesion, (incidences of violence, deaths and destruction of property) and discrimination against the marginalised groups and minority communities continue to be reported across the nation during electoral and political activities.

Therefore, we urge that:

1. The NCIC monitors and flags out non-compliance of the National and County governments (Executive and Assemblies) for inclusion of marginalised groups and marginalised communities.
2. The Commission fully investigates any complaints of electoral discrimination brought to it by marginalised groups and marginalised communities and recommend for prosecution or any other lawful censure.
3. The Commission develops a binding commitment charter with all participating political parties to the observance of the
4. rule of law, cohesion and promotion of inclusion and integration of communities.
4. The Commission takes action on individuals and political parties that commit violence (physical, verbal or otherwise) to prevent or undermine the participation of women, youth or PWDs and minority communities in electoral and political processes, thereby contributing to increasing their exclusion.
5. The NCIC must sanction any state actors who fail to comply with inclusiveness and equality constitutional provisions.

2.13 Calls to the National Gender and Equality Commission (NGEC)

The National Gender and Equality Commission Act, 2011 pursuant to Article 59 (4) of the Constitution of Kenya, established the NGEC. It focuses on marginalised groups, which include women, youth, persons with disabilities (PWDs), and children, the older members of society and marginalised communities. The functions of the Commission as provided for in Section 8 of the National Gender and Equality Act 2011 includes promotion of gender equality and freedom from discrimination in accordance with Article 27 of the Constitution. It is the principal organ of the state in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to marginalised groups including minorities and marginalised persons, women, persons with disabilities, and children. We have noted that there has been a very slow progress in achieving gender equality and inclusion milestones anticipated the Constitution 2010 and those in various international protocols that Kenya is a signatory.

Therefore, we urge that:

1. NGEC monitors and reports on compliance of state bodies, including parliament and political parties on their compliance to inclusion and gender equity principles, and makes recommendations on compelling these institutions' compliance
2. NGEC develops regulation targeting county assemblies to ensure nominated representatives representing marginalised groups (women, Youth and PWDs) are not de-whipped on the basis of their gender or disability
3. NGEC MUST play its role in enforcing constitutional requirements of achieving equality under the law (Article 27(3)), the values and principles of public service (Article 232(1)) and equal access to justice and protection of women before the law. (Article 8 of the Maputo Protocol).



2.14 Calls to the Kenya National Commission on Human Rights (KNCHR)

KNCHR is an independent National human rights institution created by Article 59 of the Constitution and established through the KNCHR Act of 2011. It is the state's lead agency in promoting and protecting human rights. Its main goal is to investigate and provide redress for human rights violations, research and monitor the compliance of human rights norms and standards, conduct rights education, facilitate training, campaigns and advocacy on human rights, and collaborate with other stakeholders in Kenya. Over the years, a phenomenon referred to as "negotiated democracy" has emerged and taken root among especially minority communities and dominant political parties. This practice circumvents freedoms of both the voters and the electoral candidates. It is therefore a breach of their Article 30 political rights. The charters, which the elders refer to when undertaking "negotiated democracy" are unconstitutional as their decisions do not respect the principles of equality and inclusion and violate the "not more than two thirds" gender rule, nor the Article 27 principle of inclusion and non-discrimination including of youth and PWDs.²¹

Therefore, we urge that:

1. The Commission takes appropriate action and raises its voice to the glaring incidents of marginalisation and exclusion of women, youth and PWDs in electoral, political and governance processes at the National and County levels, which are a contravention of the Constitution
2. The Commission promptly shares any early warning information they collect on violence and SGBV to prevent its escalation to the relevant law enforcement agencies
3. The Commission addresses the practice of "negotiated democracy" as a violation of Article 38 rights and freedom of choice and the right to participate in electoral, political and governance processes for women, youth and PWDs
4. The Commission ensures that no "negotiated democracy" act shall disenfranchise any marginalised group or marginalised community.

²¹The Saturday Standard. (2017). "Negotiated democracy breeds 'theft'". Musdaf Abdullahi. See Negotiated democracy breeds 'theft' - The Standard Entertainment (standardmedia.co.ke)

2.15 Calls to the National Council for Persons with Disabilities (NCPWD)

A key role of the NCPWD is to register all PWDs in Kenya to enable access to various programmes and initiatives (Disabilities Act 2003). However, we the persons with disabilities note that the Council's database

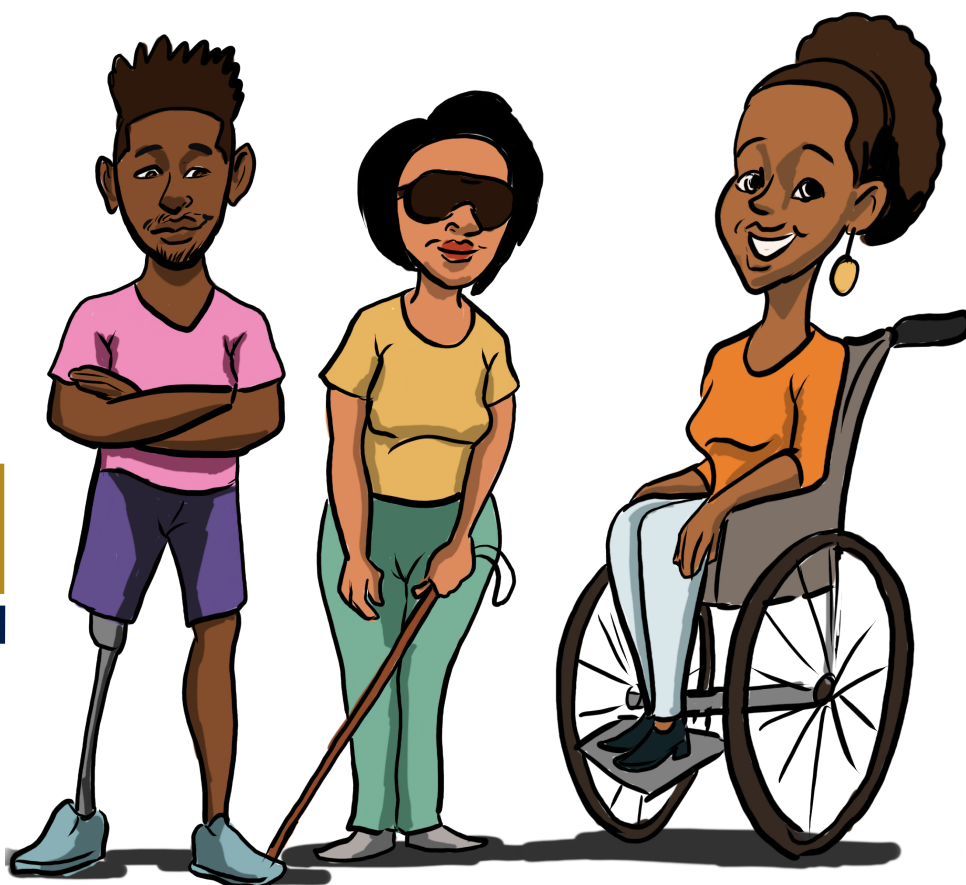
upon which many rely on when making decisions affecting PWDs is still not fully functional and has a backlog of applications.

Therefore, we urge that:

1. The Council MUST undertake a national disability census to provide accurate and disaggregated data on the status of disability in the country
2. The Council completes the development of a fully functional and accessible database of PWDs to access the due services and support
3. The National Council for Persons with Disabilities (NCPWD) makes the official list of registered PWDs by integrating into the National Population Census data set
4. The NCPWD MUST authenticate the disability lists from political parties for accuracy and flag out non-compliance
5. NCPWD undertakes comprehensive sensitisation of PWDs in relation to electoral, political and governance processes to enable them to participate meaningfully as aspirants, candidates and voters.

A key role of the NCPWD is to register all PWDs in Kenya to enable access to various programmes and initiatives

Disabilities Act, 2003



2.16 Calls to the Communicaton Authority Of Kenya (CAK)

CAK is an oversight authority that regulates the communications sector in Kenya. The Kenya Information and Communications Act (1998) established the Authority in 1999. Its mandate is to facilitate the development of the information and communication sectors, which include telecommunications, electronic commerce, postal and courier services, multimedia, and broadcasting. Some of the responsibilities of the CAK include licensing all communication systems and services, managing Kenya's frequency band and numbering resources, and protecting consumer rights within the communications environment. The IEBC is committed to putting in place an election results from a transparent, secure, and accountable management system. Towards this end, it has published the Election Laws (Amendment) Bill 2022.

The marginalised groups have noted with concern that relaying critical information concerning the electoral and, political and governance processes continues to exclude and/or discriminate some marginalised and marginalised communities. In some instances, language used (use of mostly English), or communication media (using only visual or only audio instead of both) or even timing of critical messages excludes some sections of communities.

Therefore, we urge that:

1. The Communications Authority of Kenya takes action against any media house that fails to observe these regulations to ensure transparency and inclusion
2. The Authority MUST mandate alternative communication such as closed captioning of results transmission to be inclusive of non-visual access
3. The Communication Authority work towards improved services for seamless and transparent transmission of results
4. The Authority MUST compel all state actors to ensure that their websites are disability friendly. This includes colour contrasting, font size and audio options.



...language used (use of mostly English), or communication media (using only visual or only audio instead of both) or even timing of critical messages excludes some sections of communities.

3.0 Calls to non-state actors

3.1 Calls to the media

a). Media Council of Kenya:

The Media Council of Kenya is an independent national institution established by the Media Council Act, No. 20 of 2013 to set media standards and ensure compliance with those standards as set out in Article 34(5) of the Constitution. It has a code of conduct, part of which is gender equality and non-discrimination, accuracy and fairness. The code of conduct provides that women and men shall be treated equally as news subjects and news sources and that the council shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Its roles include setting media standards, ensuring their compliance as spelt out in Article 34(5) of the Constitution of Kenya. Its other functions include promoting and protecting

the freedom of the media, enhancing ethical and professional standards amongst journalists and media enterprises, advising the government or the relevant regulatory authority on professional and educational matters in the training of journalists and other media enterprises. The Council has Guidelines for Election Coverage (2022) in addition to guidelines on gender inclusivity. It has also incorporated regulations on broadcast content, responsible reporting, diversity and marginalisation and conflict coverage. In addition, the state-owned media Kenya News Agency and Kenya Broadcasting Corporation (KNA and KBC) have a responsibility to educate voters and keep them informed throughout the electoral process. Its election-related programmes must reach the greatest number of voters possible. They should target groups that traditionally may have been excluded from the political process, such as ethnic or religious minorities and women.

Therefore, we urge that:

1. The MCK ensures all media houses adhere to the set media reporting standards and enable the marginalised groups to have access to media
2. The MCK censures any media house that does not adhere to these standards (including misinformation)
3. The media equitably facilitate the access to the rights and fundamental freedoms for women, youth and PWDs
4. The media treat men, women and youth (no gender discrimination) and PWDs equally as news subjects and news sources without regard to their social or disability status
5. The media extensively use the affirmative action framework to support youth, women, and marginalised communities in electoral and political spaces
6. MCK Promotes the use of inclusive language in communication about electoral, political

and governance processes e.g. Kiswahili, English, Kenyan Sign Language, and subtitles (for the hard of hearing), and prohibit the use of discriminative language

7. The MCK takes action to prohibit (abelism) the use of discriminative language by media practitioners with respect to assigning negative descriptions regarding some forms of disabilities
8. MCK monitors messaging on unsoundness of mind by the media as it gives the wrong impression about whether the person with psycho-social l disabilities may participate in

electoral processes

9. The Media Council must ensure the media houses provide balanced coverage and equal access to all irrespective of their gender, age, disability status, political affiliations, parties and groupings, by criticizing those found to be non-compliant
10. KNA and KBC, as state institutions, comply with the legal provisions and provide continuous inclusive voter education and information dissemination in language that is accessible to all irrespective of the social and disability status.

3.2 Calls to the faith based organisations (FBO)

The Constitution under Article 100 recognises women as a marginalised group and under Article 27(3) guarantees equal treatment, including the right to equal opportunity in the political sphere. However, women parliamentarians, especially those nominated, or those occupying the role of Woman County Representative or nominated female Members of the County Assemblies-MCAs, are viewed with disdain by their fellow male politicians. This disdain has been occasioned by cultural stereotypes on the role of women, which traditional and religious institutions further perpetuate. Because of this view, in a number of cultures, women are not even allowed to hold their own identity cards. They can therefore not participate in any meaningful way in political processes. This derogation of women has contributed to negative perception of women political leaders and the subsequent reluctance of giving them due honour and recognition as legitimate leaders especially when they are nominated.

Therefore, we urge that:

1. FBOs use their platforms to lobby and advocate for the public's support for the candidature of women, youth and persons with disabilities in political and electoral processes
2. FBO leaders and community elders speak on behalf of women, youth and PWDs to receive the National Identification Document (ID card) and voter registration documents to enable them participate in political processes freely and without undue influence
3. FBOs advocate for a change in community attitudes towards women's political leadership

3.3 Calls to the civil society organisations (CSOs)

The journey for equality and meaningful inclusion in electoral, political and governance processes for marginalised groups and minorities requires the combined efforts of all in the society, just as all will derive the benefits. The Government of Kenya recognises civil society's role in attainment of national cohesion and peaceful co-existence, and in fighting societal ills including epidemics and

disasters. Civil society works alongside the State and private sector in mainstreaming key issues including gender equality, marginalisation, vulnerability and the situation of persons with disabilities.²² As a watchdog for the society, CSOs must step up the fight to end marginalisation and exclusion of women, youth and PWDs in electoral, political and governance processes in Kenya.

Therefore, we urge that:

1. CSOs actively organise multi-sectorally to advocate and educate against social norms that condone violence against women and girls and prevent them from equal participation and full enjoyment of life through political participation
2. CSOs MUST create robust and inclusive sensitisation on violence and SGBV prevention
3. CSOs to demonstrate accountability in the delivery of the Constitution concerning implementation of Articles 81 (b) and (c) and 100
4. CSOs support emerging women leaders to ascend to and participate in policy-making positions.
5. CSOs support women, youth and PWDs and minorities to acquire digital identification documents to enable them to participate in electoral and political processes actively
6. CSOs undertake comprehensive sensitisation of youth, women and PWDs that covers both electoral, political and governance processes to enable their meaningful participation and aspirants, candidates, and voters in the elections
7. CSOs partner with political parties and Organisations of Persons with Disabilities (OPWD) to support capacity of party members and staff on disability inclusion
8. CSOs undertake a comprehensive election monitoring and observation process to ascertain the credibility of the 2022 general elections and document credible findings that can support any litigation process that may be instituted
9. The CSOs should mount a high-level advocacy strategy to ensure that state actors adhere to the not more than two-thirds gender rule and that inclusivity is achieved in elective and appointive positions.
10. The CSOs inspect party lists to ensure principle of inclusion has been adhered to.

²²"A Civil society is a public space between the state, the market and the ordinary household, in which people can debate and tackle action". BBC World Service.

3.4 Calls to the private sector

The cost of vying for various political elections has been acknowledged as one of the greatest barriers to marginalised groups (women, youth and PWDs) and minority communities actively participating in electoral, political and governance processes in Kenya. Due to their poorer economic position, the only way to increase their numbers on the ballot is to apply affirmative action. The private sector largely controls the largest proportion of print, electronic and social media where electoral

engagement occurs. To access the voters and sell their messages as serious candidates for election, the marginalised groups and marginalised communities need financial and technical support from all partners (while PWDs may need more support including infrastructural). The private sector, guided by the Constitution, has a moral duty to promote gender equality, inclusion and an end to marginalisation.

Therefore, we urge that:

1. The private sector promotes accessibility during election campaigns by supporting access to venues, publicity materials and space for women, youth and PWDs and marginalised communities
2. The private sector supports the provision of disability sensitive voting infrastructure for the PWDs in society
3. The private sector lobbies political parties to provide financial incentives for women, youth and PWD candidates to access the voters
4. The private sector supports candidates from marginalised groups to run for office, endorse them and fund them
5. The private sector to support in advocating for affirmative action policies and promotion of inclusion in all spheres of electoral and political engagement.



A garments factory at an export processing zone in Kenya. Photo Credit: NMG



Our commitment

We must work together to ensure equitable distribution of wealth, opportunity and power in our society

~ Nelson Mandela

We acknowledge that significant gains have been made through the Constitution of Kenya 2010 and various legislation enacted to expand the space for our inclusion as marginalised groups. The advocacy efforts undertaken by our groups, partner CSOs and some of our members who have successfully vied for political positions or have been appointed in government compel us to continue the struggle to realise a more equal and just society for us our future generations.

We the marginalised groups and marginalised communities commit ourselves to:

1. Adhere to the Constitution and the law of the land on all matters of inclusion and equality mainstreaming
2. Exhaustively **leverage** existing legal provisions to ensure our inclusion in elective and political processes
3. Through our respective representative Organisations to **mobilise** ourselves effectively to join political parties and seek political leadership positions.
4. **Field** aspirants for elective positions in large numbers taking into consideration the legal provisions that are in place for us to leverage
5. Be **ambassadors** for peace and social justice during the entire electoral process
6. Not **to be used** by anybody to commit chaos and violence during the entire electoral process
7. To **support** and encourage members with 'less visible' disabilities to put themselves forward to be party officials and election candidates
8. **Collaborate** with marginalised groups in the fielding of aspirants to ensure positive outcomes for marginalised groups
9. Collaborate as marginalised groups to **compel** our political parties to prioritise us in the party lists
10. Collaborate with the IEBC and CSOs to **reach** more of our members with accurate voter education information
11. To mobilise ourselves through our Organisations and networks to **participate** in the verification of the Register of Voters to ensure that our details are captured correctly for our participation in the general election
12. To urge and **hold** the relevant stakeholders accountable on inclusivity
13. To **sensitise** all citizens to reduce stereotyping of marginalised groups and minority groups
14. To mobilise ourselves to **inspect** party lists to ensure that the principle of inclusion and equality has been adhered to
15. To **register** complaints of non-compliance in a timely manner to the relevant authorities for action.

Annexes

ANNEX I: Methodology

The Charter was developed through a rapid but highly participative and inclusive process which entailed:

A detailed desk review of the extensive literature available on the inclusion and equality mainstreaming for women, youth, persons with disabilities (marginalised groups), and minorities communities in Kenya post the promulgation of the Constitution of Kenya 2010. It also covered audit reports, scorecards and performance reports of marginalised groups and minority communities in the electoral processes in 2013 and 2017 general elections; legal framework on inclusion; elections observation reports; technical position paper on the status of women in the Constitution of Kenya; legal timelines for the 2022 general elections; IEBC Annual operational plans for the 2022 general elections; status reports on the implementation of the 'not more than two-thirds' gender principle; women and economy in Kenya report; Constitutional court petitions on the 'not more than two-thirds' gender principle; and media reports.

Both quantitative and qualitative data available with the duty bearers as well as those generated in partnership with non-state actors were used. The desk review informed the narrowing (or otherwise) of the gap between the desired and actual situation.

It contributed to defining the different levels of marginalisation²³ and exclusion of women, youth and PWDs in politics and political processes. Most of the sources of data and information were identified through a continuous snowballing technique.

Primary data collection:

This involved undertaking Key Informant Interviews (KIIs) with state and non-state actor representatives and Focus Group Discussions (FGDs) with the rights holders.

Towards this end, three (3) Focus group discussion (FGDs) groups targeting youth, women, and persons with disabilities (either currently active in, or with interest in elective politics or political processes) were formed to deliberate on the key Charter themes.

Key Informant Interviews (KIIs) were undertaken to generate evidence of successes in achieving inclusion and equality mainstreaming milestones, fill data gaps, and generating calls to the relevant actors.

Data synthesis, analysis and charter development:

The synthesised data was analysed to generate a comprehensive list of calls to state and non state actors and the rights holders' commitments.

²³ There is growing intersectionality between gender, youth and PWD marginalisation. Women, youth and PWDs experience different levels and combinations of marginalisation as influenced by diverse social, political, economic and other drivers of vulnerability.

ANNEX II: List of state and non-state actors targeted by the charter

- The Independent Electoral and Boundaries Commission
- The Office of the Registrar of Political Parties
- Political Parties
- The Ethics and Anti Corruption Commission
- Political Parties Dispute Tribunal
- The Judiciary
- The Executive
- The Parliament
- The Office of the Auditor General
- The Inspector General of Police
- Office of the Director of Public Prosecutions
- The National Cohesion and Integration Commission
- The National Gender and Equality Commission
- The Kenya National Commission on Human Rights
- The National Council for Persons with Disabilities
- The Communications Authority of Kenya
- The Media Council of Kenya
- Faith Based Organisations
- Civil Society Organisations
- The Private Sector

ANNEX III: Acknowledgements

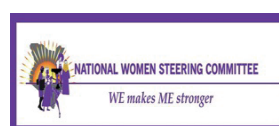
We wish to acknowledge and sincerely thank the consultants engaged in the development of this Charter of Inclusion for their valuable contribution towards providing visibility on the voices of marginalised groups as manifested in the various calls expressed on the need for electoral reforms targeting various state and non-state actors. The team comprising of lead consultant, Ms. Njeri Muhia, and the co-consultants; Ms. Elizabeth Kirema and Ms. Caroline Nyamu.

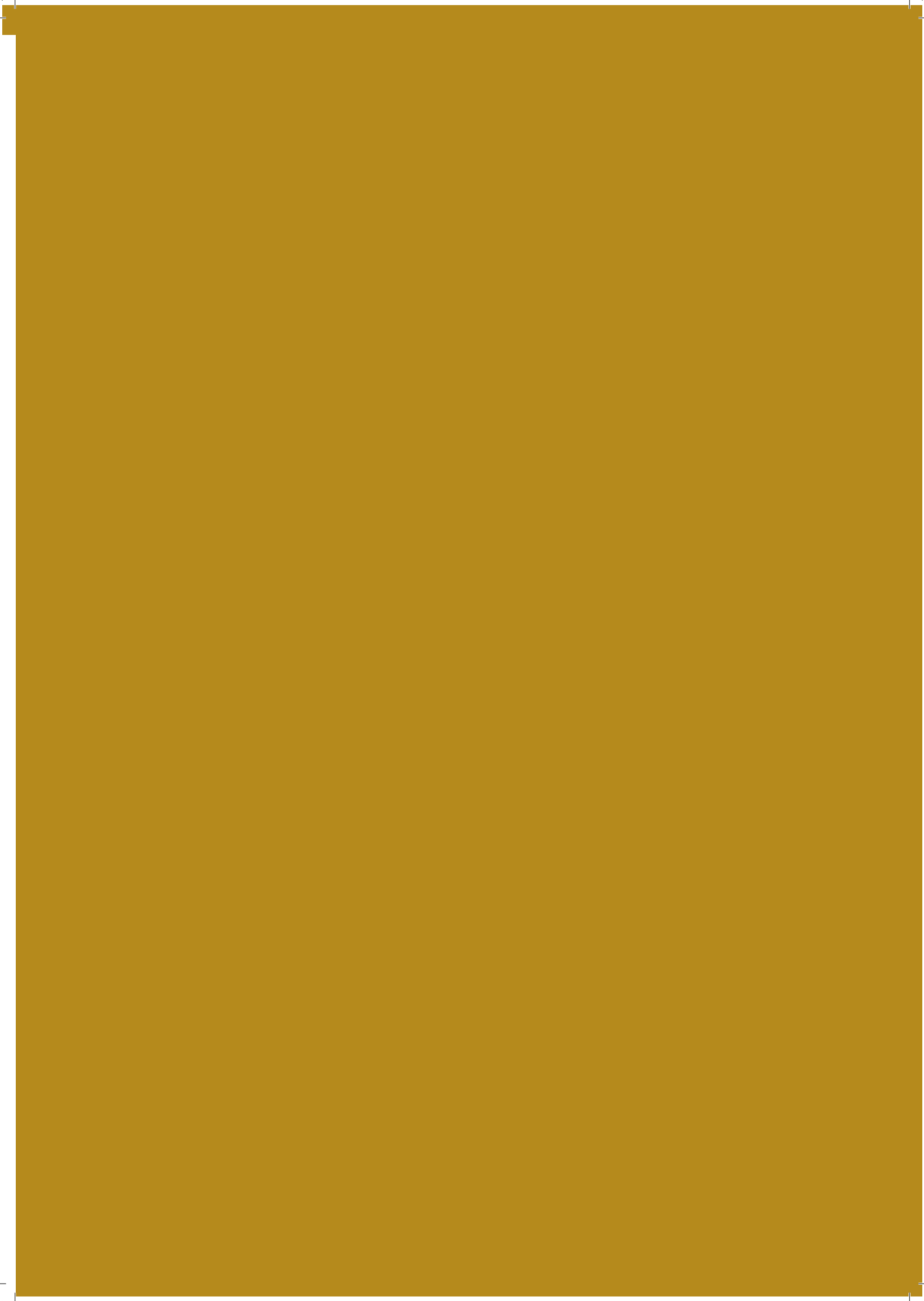
We wish to also acknowledge the various state actors that accorded us an opportunity to conduct stakeholder visits such as the IEBC through the CEO Mr. Hussein Marjan, Deputy Commission Chairperson Juliana Cherera and Commissioner Irene Masit, the ORPP through the Registrar of political parties, Ms. Anne Nderitu, the NCIC through the Chairperson Rev. Dr. Samuel Kobia and the office of the Inspector General of Police Office through Superintendent of Police Jared Ojuok. We also acknowledge the participation of various non-state actors representing women, youth and persons with disabilities who engaged in the focus group discussions that provided insights into the drafting of this document; including the interreligious council of Kenya.

We acknowledge all the non-state actors that were involved in the validation of this

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