



# Political Economy Analysis on

Women's Inclusion and Participation  
in the Political Arena.



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**Crawn Trust**

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# Acronyms

## **CRAWN Trust Community Advocacy and Awareness Trust**

CSO	Civil Society Organizations
DCI	Director of Criminal Investigations
DPP.	Director of Public Prosecutions
GDP	Gross Domestic Product
IGP	Inspector General of Police
IEBC	Independent Electoral Boundaries Commission
KNBS	Kenya National Bureau of Statistics
KNCHR	Kenya National Commission on Human Rights
MCA	Member of County Assembly
MP	Member of Parliament
ORPP	Office of Registrar of Political Parties
PPDT	Political Parties Disputes Tribunal
WROs-	Women's Rights Organizations

## Executive Summary

Women's exclusion from participation in the political arena is one of the major challenges facing Kenya's representative democracy, the unequal representation in political leadership and decision-making. Achieving equal representation of gender requires a collaborative effort from state and non-state actors. The issue is also not just a constitutional and legal imperative; gender balance in Kenyan politics includes levelling the political fields by overcoming systemic, structural and ideological barriers that still exist and prevent women from engaging meaningfully in the political participation and realisation of their political rights.

The 2010 constitution of Kenya envisioned the implementation of gender balance in the public space including the political sphere by providing the necessary constitutional thresholds for that vision to be attained. The relevant responsible state agencies should be held accountable for the failure to attain the two-thirds gender balance which has consequently over time affected the participation of women in politics, agenda-setting and decision-making.

This study recommends in the short term that all political parties, especially the more established ones should be held to account for the adoption and Implementation of candidate's gender targets; demand for law enforcement agencies such as the police to make the political landscape safe for women's participation by taking action against those who target women with intimidation, harassment and violence, and the media should be engaged to neutrally frame the perception of women politicians. Additionally, the IEBC should use the provisions of Articles 27(6), (8), 81(b) and 38 to take administrative actions that ensure that political parties' nominations comply with the two-thirds gender rule for the election for each of the respective county legislatures, national assembly and the senate

In the medium-term, there is a need to push for campaign finance reforms to limit the flow of illicit money and abuse of public offices, in election and campaign financing so as to level the playing field and attract more women to participate in elections. The unregulated availability of money gives an unfair advantage to some candidates (mostly men). Additionally, agencies and stakeholders should track, collect and make available data on instances of abuse of office by public officials and use of public resources as well as reported cases of violence against women in politics followed by data on prevention and response efforts.

In the long-term, it is in the best interest of the country to push for political reforms and good governance away from the pervasive neo-patrimonial system of governance if more women are to join politics. Also, there is a need for the creation of a social institution and gender index that



# Introduction

This study looks at the unequal power relations between men and women through a political economy analysis which is simply aimed at creating an understanding of how women are affected by and within the political economy.

Political economy analysis helps identify policy responses and strategies aimed at understanding the prevailing political and economic processes of society through incentives, relationships, distribution and contestation of power.

## **Constitutional Arguments - The Two-Thirds Constitutional Imperative.**

In this part, we look at the question: is legislation gender-neutral, or do particular laws reinforce and sustain subordinate or discriminate against women's participation in politics?

From the constitution's position, it explicitly expresses its gender neutrality but is also deliberate about the inclusion of previously marginalised groups. Article 10 on the National values and principles of governance sets the tone of inclusion in Article 10 (2) (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised. In the Bill of Rights, the entire Article 27 focuses on equality and non-discrimination and outlaws discrimination on any grounds.

*Article 27(3)*

*"Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.*

*Article 27(4)*

*"The State shall not discriminate directly or indirectly against any person on any ground, including 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"*

*Article 27(6)*

*"To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination."*

On inclusion of women in political representation, 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 are elective or appointive bodies shall be of the same gender."*

To strengthen article 28(8), the framers of the constitution gave Parliament the mandate to ensure that the electoral process complies with the principle by clearly stating that Parliament operationalise that provision in Article 100(a)

*"Parliament shall enact legislation to promote the representation in parliament of:*

*Women:"*

Article 81(b) of the Constitution requires that the electoral system shall comply with the principle that not more than two-thirds of the members of elective public bodies shall be of the same gender.

Article 177(1)(b) of the Constitution requires that the membership of a county assembly consists of the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly is of the same gender

The Political Parties Act (2011) Section 7 (2) b requires that political parties need to have diversity and gender balance for them to meet the conditions of full registration.

More than ten years after the promulgation of the constitution, parliament is yet to pass legislation that will bring the two houses – the National Assembly and the Senate – in compliance with Articles 27(8), 81 (b) and 100 which demands that not more than two-thirds of members of elective or appointive bodies are of the same gender. It is worth noting that the constitutional provision on gender equality is the only clause yet to be enacted by specific legislation to operationalise it. There have been a number of initiatives towards passing legislation to fulfil the gender balance constitutional requirement but those efforts have not been successful in Parliament.

On 29th March 2017 , the High Court ruled that any person could petition the Chief Justice to advise the President to dissolve Parliament if relevant legislation was not passed within sixty days. At the end of the sixty

days, Parliament had not enacted the relevant legislation on gender balance compliance.

On 21st September 2020, Chief Justice David Maraga advised President Uhuru Kenyatta to dissolve Parliament for its failure to enact legislation to implement the two-thirds gender rule.

On 22nd September 2020, the Speaker of the National Assembly in an opinion piece said that the high-level criticism levelled against the Kenyan Parliament is misplaced and the 2017 court order applied to the 11th Parliament whose term expired upon the General Elections in August 2017.

The lack of implementation of the two-thirds gender rule has simply been an issue of lack of political will and impunity from both the executive and Parliament. Murunga (2020) concludes that the issue of two-thirds gender rule is beyond the constitutional and legal imperatives. The full implementation of the two-thirds gender rule in Kenya is arguably the best panacea for achieving gender balance in all spheres, especially in public decision-making structures affecting society but unless the society is emancipated from the shackles of patriarchy, freedom for women will still be a far cry. Both structural and ideological barriers still exist and are preventing women from attaining emancipation.

## Methodology

The framework adopted has three dedicated phases which are related and are listed as follows: problem identification, problem diagnosis and consideration of plausible change processes

The first part of the approach is to identify the specific problem, which in this case is the failure to implement the two-thirds gender rule and the enduring obstacles that have been put in place by actors to deliberately prevent active and influential advocacy and use of evidence for transparent, accountable and the inclusive political participation of women in Kenya. It will also highlight the current roles of women and other groups in decision making and actions related to access to women's political participation in Kenya.

The second part of the approach will be to identify context and institutions, and the power, incentives and behaviour of the various actors involved in the implementation of the two-thirds gender rule. At this stage the purpose will be also to identify the key power relations, dynamics and trends in governance systems, structures and processes related to women's political participation in Kenya, which include all kinds of power brokers, values and norms for decision making, as well as institutions both formal and informal enabling the perpetuation of the exclusion of women in the political sphere.

The key structural features, including both features of the context that are relatively slow to change or essentially fixed characteristics, and institutional features that may be more susceptible to change over the short to medium term; and relevant individuals and organizations, their motivations (whether financial, political, personal, ideational etc.) and the types of relationships and balance of power between them. The output of this will be to provide a stakeholder mapping that identifies power brokers and power analysis.

Approach two will also include relevant analytical concepts that provide insight into actors' incentives and decision logic. This approach is important for identifying key obstacles that prevent active and influential advocacy and the use of evidence for transparent, accountable and inclusive political participation of women in Kenya.

The third part of the approach will be to provide solutions that will address the key issues that come out of the analysis in the second approach. This is necessary to provide recommendations on both immediate, medium- and long-term approaches/strategies that CRAWN Trust and other stakeholders such as the state institutions, communities and community groups, media and civil society can use to ensure inclusion of women in the political sphere, and fair representation.

*“Parliament shall enact legislation to promote the representation in parliament of: Women:”*





# Kenya's Political Economy

## Economic characteristics

Kenya has a diverse and dynamic economy with agriculture making the highest contribution to GDP by more than 30%.

According to KNBS (2020), about 70% of the lowest wealth group are employed in agriculture as opposed to the top wealth groups who are employed in professional and managerial activities, sales and services sectors. There are more women from the top wealth group in domestic service (about 21%) than there are women for the bottom wealth group (less than 2%) in the same occupation.

Kenya's large part of the labour force is stuck in a low productivity informal sector. The informal sector employs more than 70% of the labour workforce. Among the employed population, a larger proportion of females (relative to males) and youth are in informal sector employment. Females are more likely to be working in family agriculture, and as unpaid family workers or to be in self-employment relative to males.

The Kenyan economy has enjoyed relative economic growth for years, but it hasn't been sufficient for eradicating poverty and inequality. Unemployment and underemployment have been identified as Kenya's most difficult and persistent problems. Most of the poor people are employed in agriculture with the majority being women. The majority of the women in the rural areas spend a great deal of time on low productivity work which has created major income disparities between men and women.

The reasons for gender disparities in employment opportunities include segregation in the labour market, social attitudes towards women, inadequate capacity on the part of women in terms of their knowledge and skills and lack of gender-responsive policies and programmes. Inequality between men and women is widespread in the country and remains one of the major obstacles to sustained human development in Kenya. Males have higher labour force participation rates, higher earnings, and own more assets than women. Most women in Kenya are concentrated in low paying, low-status occupations with poor fringe benefits and carried out under poor working conditions and therefore hold very little prospect for poverty reduction and upward mobility. (KNBS, 2020)

Inequality has generally declined at the national level, in rural and urban areas, and across social strata in the decade from 2005/06 to 2015/16. Based on all inequality measures, inequality is higher among the non-poor than the poor. It is also higher among households whose heads have higher education. For the non-poor, all the indices indicate that inequality increased between 1994 and 2005/06 but thereafter declined in 2015/16.

The distribution of unemployment remains uneven among males versus females and between youth versus adults. Kenya also has a weak social protection programme to help cushion vulnerable and poor households. In order for the economy to enjoy inclusive growth as well as address inequality, the government has to address the challenges of corruption, mismanagement of public resources and impunity, which are the big scourge the economy struggles with. The minority elite has captured and exploited the factors of labour like land, labour, resources and economic opportunities for their own self-interest and undermined governance and institutional structures. The majority of women work in agricultural activities and in the informal sector which has translated to low income and margins relative to the formal sector which has inhibited the growth of women's economic power and contributed to exclusion.

Therefore, good governance reforms that strengthen property rights, respect for rule of law, political goodwill in anti-corruption efforts and political accountability, are vital in supporting employment-generating growth.

Kenya's economy took an enormous shock from the COVID-19 pandemic, contracting by 0.3 percent in 2020 but is showing considerable resilience and is expected to post stronger growth rebound in the region.

In 2021, real GDP has increased by 5.3 percent in the first half, supported by rebounds in industry and services sector. Agricultural output has however fallen by 0.5 percent due partly to below-average rains.

In 2020, poverty surged as the pandemic plunged the economy into a recession with 2 million new poor people. In 2021, poverty has declined but it remains above pre-pandemic levels. Poverty dropped in both rural and urban areas due to ongoing strong economic recovery, but progress has been slower in rural areas. More Kenyans experienced food insecurity in the first half of 2021 amid renewed containment measures.

The projection in the medium term is that Kenya is projected to enjoy robust growth thanks to diversified sources of growth coming from agriculture and industry.

The other big challenge the Kenyan economy faces heading into the medium term is public debt accumulation

due in part to increased infrastructure spending. External debt has been increasing faster than domestic debt. Debt servicing for domestic debt is double that of external debt due to higher domestic interest rates

## Political characteristics

At the time of independence, Kenya was a multi-party state and held its first multi-party election in 1963. However, in 1969, the Kenya People's Union-KPU, a radical party that had emerged challenging the domination of ruling party Kenya African National Union-KANU was banned moving Kenya to a de facto single party system. It was not until 1982 after the attempted coup, that Kenya was officially enacted into a one-party state. The clamour for competitive multi-party democracy in the late 1980's led to the repeal of the constitutional provision that barred the registration of political parties making Kenya a multi-party democracy.

From 1992, Kenya has held multi-party elections every five years and so its political governance can largely be considered a multiparty democracy.

Until 2010, Kenya was a parliamentary democracy and moved to the Presidential system modelled around the United States where the executive power is vested in the Presidency with Parliament and Judiciary providing checks and balances to the executive.

The 2010 constitution presented an invaluable opportunity to renew the country through institutional reforms with progressive checks and balances on different arms of government, but the political elite continue to play politics of patronage, undermining the constitution for selfish interests.

On representation, the 2010 Constitution created a different electoral structure, from capping constituencies at 290 to the introduction of 47 counties, 1,450 wards and a bicameral Parliament. For elective seats, Kenyans elect six positions which are President, Governor, Senator, Women Representative (county woman MP), Member of the National Assembly and Member of the County Assembly. In summary, the 2010 constitution increased the levels of representations based on two levels of government, different branches of government, and constitutional commissions.

Since the re-introduction of multiparty elections, most of the general elections apart from those held in 2002 and 2013 have experienced pre- and post-election violence and ethnic flare-ups. This has been attributed to inherent ethnic divisions, social and economic inequality and the majoritarian electoral system in which the winner-takes it-all. Kenya's politics is marred by ethnic profiling, mobilisation and contestation which then determines the distribution of public resources, public service jobs and service delivery leading to a section of the society feeling socio-economically disempowered.

This political violence has distinctly been used to repress, deter, control and coerce victims whilst at the same time enforce a patriarchal control of governing institutions. In a democracy without safe and equal participation, women are the constituency that bears the heaviest brunt of this electoral violence. Threats, violence and the fear of violence has been one of the key deterrents that has hindered women's participation and full contribution to Kenya's political space.

# Understanding Kenya's Political Economy

## Neo-patrimonial system of Governance

Kenya's post-independence period has been bedevilled with the deep and intractable neo-patrimonial system of governance throughout the various regimes that have been in power. Powerful political elites have established support for using State resources causing widespread grievances over inequality and longstanding exclusion in the distribution of state resources. (Branch and Cheeseman 2008).

This pervasive politics of patronage has weakened institutions because Presidents have maintained authority through personal patronage rather than the law, and formal political and administrative systems. This patrimonial system does not only undermine the autonomy of state institutions but the value of integrity, leadership, and accountability, as well as representativeness.

## Corruption and Mismanagement

Corruption and mismanagement of public resources often defined as the abuse of power for private gain are also one of Kenya's political economy problems always aimed at sustaining a system where power and wealth are interconnected. In Kenya, corruption cases involving government officials are always making headlines despite the various anti-corruption efforts and awareness that have been conducted. The independent state-funded anticorruption agency Ethics and Anticorruption Commission claimed that Kenya loses one-third of its budget annually putting the figure at approximately \$6 billion in 2016 . The President of Kenya also claimed that Ksh 2 billion is lost daily . On an annual basis, the amount of public money lost would be equivalent to Ksh 730 billion or \$6.8 billion.

According to Rij (2021), Kenyans complain about the high level of corruption among the ruling elite but at the same time, they are actively involved in corruption on a daily basis in their personal or professional interactions with frontline public officials. Successive governments in the last twenty years have promised to wage an anti-corruption war promising zero-tolerance to corruption but it has only been about preserving investors' peace of mind for access to wealth while ensuring voter's support or access to power.

Neo-patrimonialism and corruption have continued to thrive, exposing Kenya's political economy as having a national-values-governance problem. This is despite the fact that the envisioned principles of governance are in Article (10) (2) (c) of the constitution, which describes national values and principles of governance to include "good governance... transparency and accountability." Article 73 (2) (a), (b) and (d) also provides the guiding principles of leadership and integrity which include "personal integrity, competence and suitability...", "objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by... favouritism...", and "accountability to the public for decisions and actions."

## Ethnicity

It is instructive that neo-patrimonial system of governance and runaway corruption have not only been entrenched in isolation but used for ethnic mobilisation and configuration. The discretionary targeting of public resources by influential political actors has predominantly been deployed to build political networks of political support in regional and ethnic dimensions. Public resources are disproportionately directed toward the region or ethnic base where the President comes from and also those politically connected to him. So, clientelism – which is to discretionary targeting of public resources by the political elite in exchange for political support – has strengthened ethnic mobilisation as a form of political organising and stratification.

Women's burden in balancing out the gender and political roles amidst entrenched patriarchal attitudes and systems in society

- Negative patriarchal stereotypes, attitudes and norms propagated in society against women's leadership
- Negative media portrayal- standards placed on women, portrayal along with care workers as caregivers and low coverage of political ambitions -
- Women's burden in balancing gender and political roles- due to the effects of COVID 19 on increased unpaid care work, disenfranchisement of women due to the need to adopt virtual forums that were caused by the technological adaptation to COVID- could refer to the UNDP study on unpaid care work post covid



# Kenya's Political Economy on Women's Participation in Politics

First is that the neo-patrimonial system of governance has established a longstanding political elite that has centralized power and control over state apparatus, political parties, and even the electoral process has been heavily male-dominated. This informal system enforces a patriarchal control of governing institutions that exclude women from participating in politics. Patronage networks tend to uphold traditional power relations and thus often reproduce female subordination in politics. (Beck, 2003). Therefore, the entrenched pervasive patronage system of governance is one of the biggest problems not only eroding public trust in elections and political institutions but also contributing to the exclusion of women participating in politics. This patrimonial system also entrenches the culture of political violence to repel and control the political rights of its victims who include women to discourage them from being politically active. In dominant political parties, they who were seeking the party nomination slot is a guaranteed win in the general election, violence is always used as a means to repel candidates who do not come from the political elite circle and women are the main victims.

Second is that under a corruption and mismanagement political setting, women are rarely included in political participation because of their lack of capital and limited access to power. Beck (2003) identifies that in governments associated with a high level of corruption there are low rates of female participation in government. He observes this by measuring corruption using data from the International Country Risk Guide and including a range of variables in their analysis to control for various underlying institutional characteristics like women's participation in government. This doesn't mean that women holding public positions are not part of the corruption and public mismanagement network. Some have been recruited into this network and corruption system after believing that it is part of "doing politics" for political survival instead of choosing to join the fight against corruption that facilitates equal participation of women in politics. The women leaders and officeholders who join these corrupt system networks end up enforcing the patriarchal system that excludes women from politics. It should be noted that the goal of women's participation in politics shouldn't be tied to the fight against corruption. This is because women officeholders are scrutinized keenly and socially penalised for any acts of corruption as compared to male officeholders, therefore the expectation will be much higher on women leaders joining politics and deter many from the harsh public accountability scrutiny.

The third issue excluding women in the participation in politics is ethnicity. According to Okoth (2020), political authority in every community follows a patrilineal family system and is passed down from generation to generation, creating political dynasties as the basis of local political structure. This social structure still defines the political landscape among most communities in Kenya, where some families dominate politically over those who are outside the political lineage, where most women remain disadvantaged. In view of the fact that Kenya's political elite mobilize political support from an ethnic balkanization standpoint, this means women are largely excluded in the political sphere when it comes to decision-making and agenda-setting and representation.

Some cultural norms financially disempower women and even disinherited them such as cultural practices where girls, women and widows rarely inherit land and are often deprived by male relatives and then inherited by children (usually male) when come of age. Women from such backgrounds are dis-incentivized to participate in politics because it's an expensive investment they have no capital to put in. Additionally, the negotiated democracy rule in some Kenyan communities prioritize male leader leadership (adopts Patriarchal system) in seats such as Governor, Members of Parliament, Members of County Assembly and the Senate while leaving only Women Representative positions for women.

Fourth is expensive campaign financing where it has been established that, overall, women have to outspend men in all elective posts except Senate in order to win due to the facts that the political deck is stacked against women.

According to Karuti & Mboya 2021, women in the 2017 election spent an average of Kshs. 23.6 million (US\$ 236,000) running for National Assembly seats while their male counterparts spent Kshs. 17 million (US\$ 170,000). Women candidates spent more than double the amount male candidates put up for MCA seats, spending an average of Kshs. 6.4 million (US\$ 64,000) compared to Kshs.2.9 million (US\$ 29,000).

This is because Kenyan politics has an "input equals output" kind of outcome, the more you spend the more your chances of getting elected, arising from the fact that the electorate tend to seek candidates with deep pockets to resolve their pressing immediate problems and the candidate who parts with handouts or finances community projects and needs, stands a better chance to resonate with the electorate. The other reason is the mode of campaigning used by women which also makes it expensive as compared to male counterparts. Women often engage in direct forms of campaigning, using small focus groups, door-to-door and face-to-face meetings as compared to male candidates who engage in large scale rallies and opportunistic gatherings. Women have to use this kind of model because it gives the opportunity to speak with electorate directly and break down the many traditional barriers and gender roles expected of a woman from the community. So, the patriarchal nature of society makes women spend more and pushes women away from participating in politics.

# Factors and Actions of Different Political Players that have Muted the Participation of Women in the Political Sphere.

In the 2017 election, out of the total pool of 11,848 aspirants who contested at the County Assembly level, 900 were female candidates and only 10.8% of them were elected. At the National Assembly level, there was a total of roughly 1,800 aspirants, only 131 women candidates made it to the ballot and only 18% of them were elected. Below, we look at the factors and actions of different.

## Political Institutions

Despite liberalization and governance reforms to open up democratic spaces and the participation of women, political institutions have still been restrictive to women's participation in the political sphere.

### Executive

The political commitment to implement the two-thirds gender rule from the executive has been below underwhelming. The executive branch of Government has not complied with the requirement for a two-thirds gender rule for appointive positions.

The Kenyan Attorney General once sought an advisory opinion at the Supreme Court claiming inconsistency in the law. The Attorney General submitted that the provision on gender equality was too complex to realise as envisioned in the constitution therefore "any measures" can be put in place to realise gender equality.

In the ruling, the court held that the provision should be implemented immediately but the political institutions to lead this have not honoured the court's directive. Both Houses of Parliament have not passed the legislation on the implementation of the two-thirds gender rule to date. The Attorney General's actions were contrary to Article 156(6) and Article 259(1). Article 156(6) which requires that the Attorney-General shall promote, protect and uphold the rule of law and defend the public interest. Article 259(1) requires the Constitution be construed in a manner that promotes its purposes, values and principles; advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights; permits the development of the law, and contributes to good governance.

In September of 2020, the then Chief Justice then David Maraga advised the President to dissolve Parliament after the legislative House failed to enact the relevant laws to operationalise the gender balance constitutional requirement but the President never acted upon that advisory.

## Political Parties

Political parties have a key role in elections and nominations placing them largely in control of the electoral system but the support they have given women on substantive representation has been minimal. It has also been noted that nomination positions effected by political parties to meet gender balance lack the political influence that can give women an upper hand in governance (Oltetia & Amayo, 2020).

In 2017, the Kenya National Commission on Human Rights (KNCHR) noted several cases of violence in party primaries and in particular against female candidates demonstrating that political parties have not instituted internal structures that give women equal opportunity to compete for elective position. Political parties signed an electoral code of conduct that included protection of women against violence, but the enforcement was poor rendering the code of conduct useless.

Political parties have also used their dispute resolution channels to deny women the chance to contest party primaries malpractices by offering nominations slots which lack much political influence compared to elective seats. The biggest challenge for women is the enforcement of constitutional principles and laws by state actors tasked with the oversight and regulation of political parties such as the Office of the Registrar of Political Parties-ORPP and the Independent Electoral and Boundaries Commission-IEBC which will disproportionately affect the performance of women in the elections at the end. The biggest policy imperative is for the ORPP and IEBC to deal with engineered exclusion which includes among others, a lack of transparency by political parties on their nomination rules, changes in nomination venues and timelines; the low capacity of political parties to carry out credible nomination processes, direct nominations and negotiated democracy which are not necessarily fair, and nominations after elections given to relatives and cronies.

## Independent Elections and Boundaries Commission- IEBC

The IEBC is among the main players wielding power to enable inclusion of women participation in politics yet have made little effort towards the attainment of equal representation through gender balance. The institution has an obligation to uphold the general principles of the electoral system, including demanding that political parties adhere to the two-thirds gender principle when submitting their list of candidates for the general election. The IEBC also has the power to act against candidates who use violence and threats of violence against female rivals. The IEBC has the mandate to enforce the Campaign Funding Act so as to level the playing field for all candidates. The IEBC has been unable to fully exercise its independence to enable it deliver on the constitutional requirements on the two-thirds gender rule. For 2022, the IEBC is under court order to ensure that they use other measures as contemplated in Article 27(6) to ensure that Political Parties adhere to the two-thirds gender rule.

## Office of the Registrar of Political Parties-ORPP

The ORPP has the mandate to ensure that political parties meet the legal requirement that there is gender balance in their leadership. The office also has the mandate to ensure that parties receiving state funding meet the legal requirement that demands that at least 30% of funds received from taxpayers go to support programs for the inclusion and participation of women, youth and persons with disabilities. The ORPP should also demand credible party primaries which then will favour women aspirants. The financial capability of the ORPP based on the resources allocated by Parliament has inhibited its ability to respond proportionately to issues arising from the failure of political parties to implement a two-thirds gender rule.

On the brighter note, the ORPP has made considerable steps in the form of reforms involving the conduct of elections which shall remain to be observed on their compliance and administration of the related penalties in case of breaches in conduct during elections as a measure of the office's adherence to electoral integrity. The ORPP has overtime engaged stakeholders extensively in the electoral reforms process

Some of these reforms include:-

- The digitalisation of services offered by the ORPP. This involves the provision of the e- citizen platform and the SMS short code (where one can verify their registration to a political party as well as de-registration if need be)
- The provision of cleaned up read-only party membership lists by ORPP which shall be uploaded and will be utilised for conducting of party primaries
- The de-centralisation of the political parties' fund to allow political parties that have any elected candidate among the six positions to be in a position to benefit from the fund
- The increased numbers of the political parties dispute tribunal to have an expanded number of 18 members

## Law Enforcement Agencies

Law enforcement is dominated by the National Police Service (NPS) which includes, the Inspector General of Police (IGP), Director of Criminal Investigations (DCI), and separately, the Office of the Director of Public Prosecution (ODPP). Elections in Kenya are characterised by violence and women in politics face various challenges from intimidation to harassment, character assassination, cyberbullying, and gender based violence. Law enforcement agencies that wield power to enable women freely participate in politics by providing an environment where women's rights and rule of law are respected, have demonstrated little effort to curb these election malpractices. Given the security challenges, women aspirants and candidates who seek police escorts will have to part with huge sums of money which most of them cannot afford. These agencies did not adequately address specific offences perpetrated against women. In the 2017 election, there are cases where women who went to the police said they were told by security forces "we don't want to be involved in politics, we are police officers," and therefore could not help. There was also cyberbullying perpetrated through Twitter, Facebook and WhatsApp where edited defamatory images of women candidates circulated on social media and little action was taken by law enforcement agencies.

## Social Institutions

Social institutions include domestic life and family, culture, community and religion. The constitution as a charter, places the family at the centre of the Kenyan society but the Kenyan family is not founded only on marriage, it's the nuclear unit. So, framing women's involvement and participation in politics around marriage excludes women from political life (Okoth, 2020).



At the same time, in some communities, all decisions related to politics are made in these male elders' community meetings. Another one is in the culture where the big question is always about whether a woman should vie for a political seat at their paternal home or matrimonial home. Unmarried women always face challenges because of the myth domiciled in the society that leadership capability is based on whether they are married or not. Religious institutions are also instrumental in enforcing patriarchal structures that place women in subordinate positions, contributing to the detriment of women's participation in politics. In Kenya where the majority of the population are Christians, the most religious persons are women and unquestionable religious teachings like submission to men have been used by society to silence women as well as put women in traditional roles and places.

## Financing

Kenyan politics is heavily dominated by money, therefore, excluding women from substantive representation. Kenyan politics is logistical in nature as it requires the hiring of campaign vehicles, meeting venues, public address systems and visibility materials amongst other things.

A survey done by Karuti and Mboya (2021) found that it costs candidates Kshs. 35.5 million (US\$ 350,000) on average to run for Senate seat; and Kshs. 22.8 million (US\$ 228,000) to contest for the county Woman Rep seat in the National Assembly. Running for the constituency MP seat, on the other hand, costs just Kshs. 18.2 million (US\$182,000); Kshs 4.6 million less than what it costs to contest the Woman Rep seat, with the same benefits, in the same house. Running to be an MCA cost, on average, Kshs. 3.1 million (US\$ 31,000).

The fact that women have limited access to financial resources in Kenya's neo-patrimonial system of governance puts them in a disadvantaged position to fairly compete with men. Combine this problem with women lacking public funding makes women candidates' participation in politics difficult.

## Women Political Movements party leagues

Women's political organising in Kenya is a story of betrayal and woe. In her paper titled "Kenyan Women in Politics: An Analysis of Past and Present Trends" published in the *Transafrican Journal of History* in 1993, Wilhemina Oduol, provides an exposé of actions of women, dating back to the pre-colonial period that illustrate the power of women organising and taking political action. She writes about the law enforcement groups amongst the Pokot, the women's councils amongst the Meru and Gikuyu, which were equivalent to political institutions. Women fought side by side as Mau Mau warriors, organized logistics and even provided intelligence on plans by the colonial government. They led insurgent groups in other parts of the country as well, the example of Mekatilili Wa Menza amongst the Giriama (Oduol, 1993). Yet, despite their contribution in various ways, women were relegated to the back banner and even forgotten in most instances, when it came to sharing the fruits of independence. Many women gave their all, sacrificed not only their lives but even those of their children. Not only did the system fail them, the patriarchal machinery seemed to conspire to ensure that they were never remembered. The recording of history blatantly demonstrates this.

Post-Independence, and as the new political elite, worked at consolidating their powers and privileges, women were left behind. So blatant was this exclusion it even trampled down the inclusion by the colonial administration. Whereas in the colonial administration, there was at least one instance where a woman held one of the specially elected seats, when the opposition then held by KADU, tried to preserve this practice, in the independence legislative council through a motion in Parliament, in 1963, this motion was defeated (Oduol, 1993). As a result out of the 12 special seats that were to be filled by appointment in 1965, none was given to a woman. In this 10 year period. From 1969 to 1983, a total of 5 women only were elected and 2 nominated.

During this era, the struggle was characterized by individual women, taking a stand, and taking on the status quo, oftentimes at great cost to themselves. There was not much in the way of a collective women's movement during this period. The decade following the attempted coup of 1982, has been described by many scholars as one of the most repressive periods in the history of post-independence Kenya.

Prof Maria Nzomo, describes this period, as one where there as total cooptation and silencing of women's political voices by the Kenyan state that was intolerant to civil society organising, unless such a group condoned and promoted the oppressive political status quo. The biggest women movement Maendeleo Ya Wanawake Organisation, epitomised this coopting and silencing, to the extent that it was coopted into the ruling party KANU as the women's wing of KANU in 1987 (Nzomo, undated).

This period, however did provide some moments of awakening for the women's movement. The women's movement was further given impetus by the growing global discourse on the rights of women, and the growing women networks both formal and informal, that evolved from the various United Nations international Women's Conferences. Kenya was host to the 2nd United Nations International Women's Conference in 1985.

This provided a great impetus to the women's movement, as it gave a platform as well as strategies for building women's agency through local organizing.

Some of the organisations that were started at the time included: The Federation of Kenya Women Lawyers (FIDA) (1985) which focused on women's legal rights' education as well as taking up public interest litigation; The Association of Media Women of Kenya (AMWIK) which focused on giving women issues a voice and visibility for women leaders; the League of Kenya Women Voters (LKWV) (1992) focused on facilitating women for political leadership, representation and voter education; The National Council of Women of Kenya (NCWK) (1992) which worked around issues of democratisation and political representation and facilitated capacity building for women candidates and monitoring of their performance and their place in their respective political parties; The African Communication and Development Network (FEMNET) which had offices in several countries and focused on communication, training and gender mainstreaming in various organizations and sectors. It was also a period characterised by the clamour for a return to multi-party politics.

Taking advantage of the return of political pluralism in 1991, the NCWK in 1992, organized a big National Women's Convention, in collaboration with FEMNET bringing together about 2,000 women from around the country. Prof Kabira in her paper, notes that this convention, marked a significant moment in the women's journey of political participation. It served as a point for galvanising support, building women's agency, developing strategies, and beginning a programme of work for collectively attacking the problem. It was a time for the birthing of a strong activism philosophy and political approach by women and the entrance of the civil society groups into the constitutional reform agenda which hitherto had been driven mainly by politicians to the exclusion of citizen groups.

The women's movement's political organising enabled them to become key players in the constitutional reform agenda. The Constitution of Kenya Review (Amendment) Act, was passed in 1998, where public participation was recognised as the driving principle of the review process. During the first national meeting organised by the Attorney General in Bomas in May, 1998, women participated and presented their case as well as in the subsequent four consultation sessions held at Safari Park. Women negotiated for their participation in the process. Women were also credited for suggesting the district strategy and constituency level structures to ensure maximum participation of the people in the review process. It is through these negotiations that eventually women were recognised as a stakeholder group, just like faith based organisations, political parties etc. (Kabira, 2012). Women continued to edge themselves into the process step by step. They managed to get six women to be included in the drafting team of the Review Bill. They ensured that:

- The structure of consultation started from constituency to district to national
- Affirmative action for women at all levels was entrenched
- Women's organisations as nominating bodies were entrenched in the law
- 30% of the 25% representation of civil society went to women
- 30% of commissioners would be women
- 30% of district representation at the national conference would be women.

This achieved very significant gains for women, and set the stage for the attainment of what is celebrated today as women's gains in the Constitution of Kenya 2010.

The constitutional principle of not more than two thirds of the same gender in any elective or appointive public body, has ensured that even political parties must comply with this principle for their registration; but the struggle remains. 'Women's wings of political parties have rarely provided the essential incubating ground for women leaders, for female solidarity in parties and for feminist policy proposals. Political parties' women's wings' have been ad-hoc, they get re-activated when the country heads towards a general election and are not at the centre of the party leadership. Instead, women's wings are commonly captured by the spouses of male leaders and have developed a species of female sycophancy (Okoth 2020).

## Media

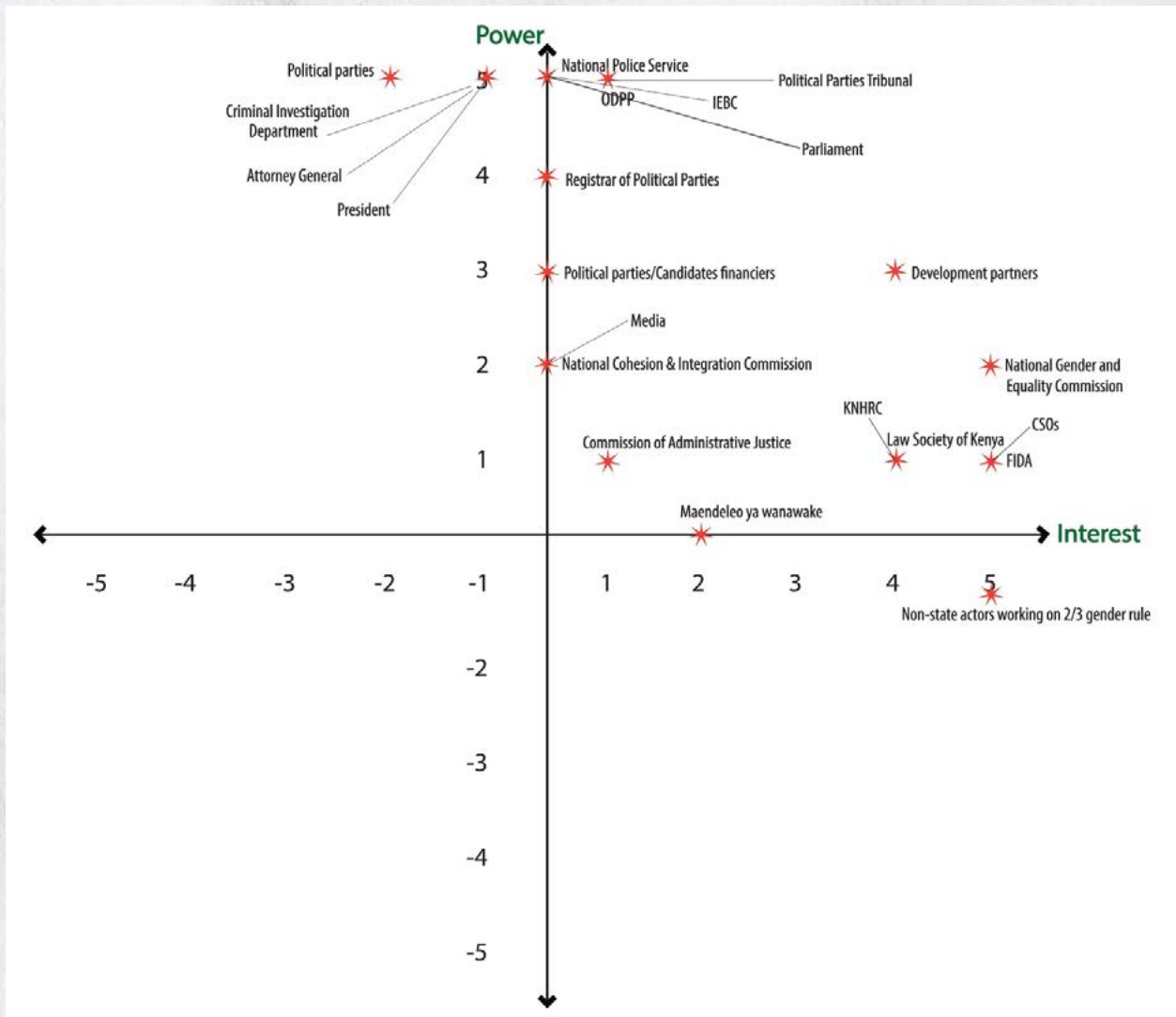
Media is a powerful tool for relaying information, educating the public, facilitating the emergence of leadership and mobilizing the masses when it comes to politics. Biased coverage against women candidates, providing more visibility to male candidates through "manel" interview panels as well as inadequate civic and voter education



# The politics of Enforcement of Two-Thirds Gender Principal

Power Mapping of players (overt and covert) responsible for expanding and or curtailing women's participation in political sphere.

## Stakeholder Map



## Analysis of the Power Map for Players Responsible for Expanding Women Participation in Political Sphere.

### Interpretation from the Power Map

DPT	Defining Interest	Reform Focus
Parliament	Neither National Assembly nor Senate has passed necessary legislation to meet the two-thirds gender requirement.	<p>A lot of focus and push needs to be placed on Parliament to pass the needed legislation to meet the two thirds gender requirement.</p> <p>There is also the need to have Parliament pass tight campaign financing laws to prevent finances from illicit sources from being used in political campaigns to level the playing field.</p> <p>Parliamentary Service Commission can ensure additional resources are appropriated to Parliament for adding new Members of Parliament at the start of every parliament to ensure compliance with the two thirds Gender Principle.</p> <p>The Speakers of National Assembly and the Senate should commit to give priority to the two thirds principle before any matters are handled by the newly inaugurated Parliament.</p>
President	The President has not shown robust interest in ensuring compliance with the two-thirds Constitutional Imperative either as head of the Government, head of executive or as the leader of the largest political party in Kenya	<p>The President should use the convening power bestowed upon the office by the Constitution as the head of Government by making sure the two-thirds gender principle is made before the new Parliament is inaugurated.</p> <p>The candidates for the Office of the President should commit beforehand on how they are going to make sure they comply with the Constitutional Principle.</p>
National Police Service, DCI, ODP	Women in politics face intimidation, harassment, character assassination, cyber bullying and violence.	<p>Law enforcements need to make the political sphere safe for women participation by taking action against those who target women with intimidation, harassment and violence.</p> <p>The leadership of the National Police Service Commission, the DCI and ODP should endeavour to have quarterly briefings on how they are dealing with the law enforcement challenges facing women political candidates.</p> <p>The security enforcement agencies need to collaborate with non- state actors such as civil society in initiatives aimed at addressing VAWiE</p>
IEBC	The IEBC is the constitutional mandated body to conduct and supervise elections. It has an obligation to uphold the general principles of the electoral system, including the two-thirds gender rule.	<p>IEBC has the mandate to ensure that the constitution provision of gender balance within elected bodies can be attained.</p> <p>IEBC should also enforce the campaign funding limit to level the playing field for candidates.</p> <p>IEBC to facilitate access to requested political parties nomination rules and manifestos for review of inclusivity within political parties</p>

<p>CSOs/WROs</p>	<p>The women's rights organisations and other civil society groups have a high interest in seeing equal representation in the political sphere and are an ally in the fight for inclusion of women in politics.</p>	<p>Women's Rights Organisations and Civil society can lobby and advocate for reforms like voter education, gender audit of elections, training candidates, support strategic alliance with women politicians. WROs and CSOs can also generate new leads and entry routes for women into politics and observation of election.</p>
<p>Media</p>	<p>The media has considerate interest to see the two-thirds gender rule is implemented and there are more women in politics. The media always plays a big role in framing the perception of women politicians</p>	<p>The media can help women in politics to use their platform to their benefit and hold those failing to enable women participation in politics accountable.</p> <p>Media stations can train journalists on gender responsive reporting especially along elections.</p>
<p>ORPP/Political Parties</p>	<p>ORPP Is central to the regulation of political parties and their adherence to the rule of law and especially in ensuring not more than two thirds mechanisms within the political parties</p> <p>Political parties are a major player that can enable more women participate in politics. The Political parties Act require parties to have diversity and gender balance whose leadership meet the gender representation principle.</p>	<p>There Is a need for the strengthening of the oversight of the ORPP with the necessary powers to regulate the political parties in ensuring they abide by the constitutional Imperatives.</p> <p>There is need to advocate for the legal fulfilment by political parties to further reforms and achieve gender parity. Political parties need to increase programs that enable the participation of women in politics. An example is on how they conduct primaries, and this will have a positive effect on the whole electoral system and improve participation of women in politics.</p> <p>ORPP should also institute tough disciplinary actions on candidates who intimidate, harass and use violence against women opponents.</p> <p>Promote good will in entrenching political narratives in the public space on women's political participation</p> <p>Conduct robust political party membership registration drives targeting marginalised groups in order to raise the number of marginalised groups within political parties.</p>
<p>Judiciary, Political Parties Dispute Tribunal</p>	<p>Resolve disputes based on the respective constitutional and legal mandates</p>	<p>Fast-track petitions by women when short-changed by parties etc. Also to fast-track prosecution as some aspirants and candidates have serious cases against them.</p> <p>Decentralise the political parties dispute tribunals so as to ensure access to justice at the local levels.</p> <p>Raise awareness on the operationalisation of PPDT for handling of electoral disputes</p> <p>Support in the institutionalisation and regulation of the political parties by ensuring processes and measures that will uphold electoral integrity.</p> <p>PPDT to finalise and disseminate model guidelines on internal dispute resolution mechanisms for political parties</p>

# Recommendations

## Immediate

### Political Parties

- a) Political parties should set to meet two-thirds gender targets in their list of candidates they will field in the various elective seats. This can also be done through zoning of some elective seats to be for women candidates only especially in their strongholds or areas of high party popularity
- b) Political parties should enforce the code of conduct against the violence that governs all members and strictly discipline aspirants who contravene through disqualification
- c) Political parties should make their nomination rules public to ensure that they conduct credible, free and fair party primaries because will give women an equal opportunity to win the party primaries elective
- d) Political parties should establish an independent dispute resolution tribunal that will address disputes arising from party primaries. This because party nominations are where women candidates get rigged out and then later denied access to justice through expensive and or biased tribunals. Political parties should also ensure compliance to set timelines when addressing grievances before the indicated dates for which disputes need to have been resolved

Political parties should ensure that fees for dispute resolution are not expensive so as to be prohibitive and discourage women aspirants from seeking resolutions to disputes arising from nomination irregularities.

### Parliament

- a) The Parliament coming In Immediately after the 2022 General Election must make the full Implementation of the two-thirds gender rule the first order of business or face dissolution for not being compliant with the constitutional requirement.
- b) Parliament should pass a motion that allows Political parties to nominate additional Members of Parliament when the new term of Parliament comes into force should they be more than two thirds of the same gender so as to adhere to the constitutional requirement.

### Law Enforcement Agencies

- a) Law enforcement agencies should make the political environment safe for women's participation by investigating and prosecuting all reports of threats, harassment, and incidents of violence against women

Electronic media has been used to harass women candidates and the police should monitor and prosecute all acts of cyberbullying.

### Media

- a) The media should neutrally frame the perception of women politicians and provide more visibility to women candidates. Media can be held accountable on this front by CSOs Women Serving Organisations setting up a monitoring team that tracks the coverage of women candidates and engage the media outlets when there is unfavourable coverage of women candidates

The media should be deliberate to provide at least 30% coverage to women candidates to enable their emergence and visibility. The Media Council should lead its members to implement this proposal for television, radio and print media.

## IEBC

- a) IEBC should use the provisions of Articles 27(6) to take the necessary “other measures” through administrative actions that ensure that Political parties’ nominations comply with the two-thirds gender rule for the election for each of the respective county legislatures, National Assembly and the Senate as duly advised by the court
- b) Operationalise the Election Campaign Finance Act to level the playing field.
- c) IEBC should disqualify candidates found to be engaging in bribery and corruption
- d) IEBC should penalise and bar candidates found harassing and intimidating rivals, using violence and penalise heavily, political parties whose members or supporters engage in violence and zoning where aspirants and candidates from other parties cannot campaign in certain regions.

## Election Observers

- a) Collect data on violence against women in politics and monitor the response of relevant bodies that need to take action
- b) Collect data on political party primaries and anomalies arising from the nomination processes.

## Women Aspirants

- a) Women Aspirants – be proactive and go for all available elective seats including dual gender seats. There is a growing attitude from male aspirants making reference that women aspirants should go for the Women Representative seats or await the nomination slots and leave the other seats to male aspirants. More women need to take the responsibility of joining elective politics to stem this attitude.

## Medium-term

- a) IEBC - There is need to push for further campaign finance reforms and attract more women to participate in elections
- b) ORPP - There is and need for the strengthening of this office to be more effective in reigning in political parties
- c) Women Politicians - Looking at Kenya’s political economy that places informal power with political elites, women who wish to join politics should consider aligning with key political players and WROs to provide them with better political standing in the tough political space
- d) WROs, CSOs and, Development Partners - Track, collect and make available data on reported cases of violence against women in politics followed by data on prevention and response efforts. Support women candidates who get to the ballot. .

## Long-term

- a) Women Leaders - It is in the best interest to push for genuine political and electoral reforms, and good governance away from the pervasive neo-patrimonial system of governance if more women are to join politics. This must include the strengthening of political parties as ideologically leaning institutions (away from being special purpose vehicles used to ascend to power at the different levels) delinked from political personalities and strengthen the management of political parties by ensuring the that state officials do not hold office in a political party and make the political landscape more fair for the participation of women
- b) WROs and CSO - Create a social institution and gender index that measures the underlying drivers of gender inequality in social institutions.



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