



GENDER SCORECARD 2017 ON ELECTIVE AND APPOINTIVE POSITIONS

## Kenya's Status on 2/3<sup>rd</sup> Gender Principle

**Uraia**



## FOREWORD

This second edition gender scorecard looks at the second election after the promulgation of a new Constitution in 2010. The first election having come in 2013, hence the second election held in 8<sup>th</sup> August 2017 is a further post-election analysis on how women, youth, marginalized, minorities and people with Disability have fared in elective and appointive positions.

The report focuses on National Assembly, Senate, County Governments, County Assemblies, Ambassadors and High Commissioners. The report provides the policy and legal framework within which the analysis took place, from international, regional to national level mechanisms.

The Constitution of Kenya provides a legal framework on gender equality and equity. The Constitution gives the minimum in terms of practice and as a principle the not more than two thirds threshold for implementation of affirmative action. There are key institutions charged with the mandate of ensuring that this principle is put to practice. These include the Executive, the Office of Registrar of Political Parties (ORPP), the Independent Electoral and Boundaries Commission, Inspector General of Police (IG), the Attorney General (AG), the Office of Director of Public Prosecutions (ODPP), the State Department of Gender and Youth Affairs (SDGYA), the National Gender and Equality Commission (NGEC) as well as political parties.

We urge all these institutions to work together in the realization of women's rights to representation in all appointive and elective positions. This will enhance women's voice as well as visibility in decision making, policy formulation and legislation capacities. Although Kenya has made significant political and legal strides, especially with the electing of 3 women Governors and 3 women Senators as well as 34 youthful MPs, 75 youthful MCAs, the numbers are still below the minimum threshold of two thirds constitutional requirement.

The report notes some drawbacks especially on the part of parliament on meeting the constitutional requirement to enact a national law with reference to Article 100, as well as revision and amendments of political parties act and elections act as pertains regulations on party lists and party funding. Further, there are other factors that inhibit youth, PWD and women's effective participation, involvement and inclusion in electoral and political processes.

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## ABBREVIATIONS AND ACRONYMS

<b>ACHPR:</b>	African Charter on human and People's rights
<b>AU:</b>	African Union
<b>CEDAW:</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CoK:</b>	Constitution of Kenya
<b>EAC:</b>	East African Community
<b>GoK</b>	Government of Kenya
<b>ICCPR:</b>	International Covenant on Civil and Political Rights
<b>IEBC:</b>	Independent Electoral and Boundaries Commission
<b>IG:</b>	Inspector General of Police
<b>NGEC:</b>	National Gender and Equality Commission
<b>SDG:</b>	Sustainable Development Goals
<b>ODPP:</b>	Office of Director of Public Prosecutions
<b>ORPP:</b>	Office of Registrar of Political Parties
<b>UDHR:</b>	Universal Declaration of Human Rights
<b>UN:</b>	United Nations



## EXECUTIVE SUMMARY

The National Assembly (NA) has 290 directly elected Members. In the concluded 2017 General Elections, 267 men and 23 women were elected at the ballot. Further, we have twelve (12) Nominated Members to the National Assembly, six (6) of which are men and six (6) Men respectively. Additionally, we have exclusively 47 women elected as County Women Representatives to National Assembly. Finally, we have one (1) speaker. In total we have 350 Members. ***In order to comply with the Not more than Two Thirds Principle, the NA ideally should have 117 women representation as a bare Minimum and 232 on the majority (maximum representation).***

The representation of People With Disability in Parliament (NA & Senate) (2017), Table 4.3 indicate that only One person was nominated to National assembly. The representation of Minorities Interests in Parliament 2017, Table 4.3 indicate that only one person was nominated to National assembly this was the same for Marginalized Groups Representation in Parliament as indicated in Table 4.3 where only one person was nominated to National assembly.

The Senate has a total of 47 elected Members. Further, there are 20 nominated members to the Senate; comprising of 2 males and 18 females. A further breakdown of the 18 females nominated as senators, 16 represent women, 1 represents the Youth constituency and 1 represents the constituency of Persons with Disabilities (PWDs). ***In reference to The Constitution of Kenya (CoK, 2010), Article 98 (a),(b),(c) and (d), therefore, The Senate does not meet the minimum threshold on Not More than Two Thirds Principle. Ideally the Senate should have 23 women to be able to meet this requirement.***

In this analysis, reference is made on persons below age of 35 years. According to [mzalendo.com](http://mzalendo.com)<sup>1</sup>, Parliament had a total of 34 youthful leaders.

There are 27 National Assembly Committees. In general, except one committee, the committee on Members' Service and Facilities (MS & F) which had 30% female representation, the rest met the not more than two third gender rule. Overall, women representation in National Assembly Committee's is at 43%, which is significant.

Table 4.10, indicates that with the exception of Committee on Devolution and Inter-Governmental Relations which had No female representation, all the other 18 committees met the two thirds gender principle and requirement. Overall, women had 41% representation across the committees. This was slightly lower than National assembly representation by 2%.

There were 21 line Ministries and 22 Cabinet Secretaries. Hon. Raphael Tuju was appointed to the cabinet without portfolio. There were six (6) females appointed to the National Government Cabinet. These represented 26.5%.

There are 21 Chief Administrative Secretaries in the current administration and only three were female representing 14%

There were thirty five (35) slots for Permanent Secretaries. Eight Women (8) were appointed against 27 males. This represented 23%.

Seventeen out of Forty Seven Counties representing 36% of the Counties did not Comply and hence did not nominate PWD to their County assemblies. There were 75 youth Nominated to all the 47 County assemblies. The fact is that four -out- of forty seven counties, represent 9% non-compliance to Article 54(2), 55 and 56 of the Constitution of Kenya 2010. The study found out that 41 out of 47 Counties did not nominate marginalized Persons to their

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<sup>1</sup>[www.info@mzalendo.com](http://www.info@mzalendo.com), 6.4.2018, 3.30 pm

respective County assemblies. Only 63 minorities nominated to County assemblies countrywide. Seven (7) marginalized persons nominated in 6 Counties. Further, eleven out of Forty Seven Counties did not nominate minorities. These counties need to be alive to Provisions of Article 10 and embrace the principle of diversity in representation.

Section 36(2) of the Elections Act (2011) gives a general requirement for the prioritization of Persons With Disabilities, the Youth and any other candidate representing a marginalized group, the Act fell short of the type of promotion of marginalized groups as required by Article 100 of the Constitution

The study had numerous challenges including finding disaggregated data by gender, age, disability, minorities and marginalized groups in society. Further, it would be too expensive to physically visit all 47 counties to collect data on executive committees and committees of the assembly to analyze these information.

Programmatically, there is no coherent national level strategy or Government program for enhancing women's Political leadership, participation, inclusion and involvement through political, and electoral processes.

### ***Recommendations***

This study recommends the development of County level and political party level Youth sensitive and responsive policies in line with the Constitution of Kenya

The study recommends that, Civil Society should lobby political party leadership, The president and Governors to appoint more women, youth and PWD to positions of decision making, policy formulation (executive) and legislature. These cadres of leadership need to speak boldly about the need to have a formula for Parliament (NA & Senate) women representation.

The study further recommends that Kenya needs to sign and ratify the African Youth Charter (AYC) that entered into force on 8<sup>th</sup> August 2009 and signed on June 28<sup>th</sup> 2008, yet no accession or ratification. The need for domestication is alive to Article 2 (5) and @ (6) of the Constitution of Kenya 2010.

## CHAPTER ONE: INTRODUCTION

### 1.1. Background

The Constitution of Kenya (CoK, 2010) requires the state as duty bearer to inter alia take policy, legislative and other measures to implement the principle of equality including Affirmative Actions toward gender parity. Judicial, Legislative, electoral as well as political decisions have a greater bearing on the implementation of Not More Than Two thirds gender Principle and Requirement in Kenya. The Concluded General Elections of August 2017, were a good litmus test, to gauge the performance of both women and institutions of Governance on the Gender Score Card.

### 1.2. Context and Background

#### **Political leadership**

The need to develop a national political leadership program is urgent in Kenya. Such a programme will enhance women and youth political skills as well as provide the much needed exposure and experience in politics. However, the main machine through which such can be nurtured is through effective and efficient internal party structures. Political parties are expected to adhere to laws, policies and regulations for furthering women and youth inclusion, and participation. Currently the political landscape is dominated by men and semblances of male chauvinism and patriarchal practices still exist that hinder effective women and youth involvement, participation and inclusion in decision making and policy formulation as well as legislation processes.

#### **Policy and legal framework**

The gendered marginalization and exclusion of youth, and women goes against the Constitutional Provisions on gender equity and equality, values and principles. The Government of Kenya is by the Constitution of Kenya (CoK, 2010) required, as duty bearer to inter alia take legislative measures to implement Affirmative Action toward gender parity. This includes article 2 (5) (6) and article 100. The Constitution through numerous articles pronounces itself on gender and youth representation, participation and inclusion. Further, the framework on inclusivity and gender equity are expounded in national laws, policies, National mechanisms like Vision 2030 and judicial decisions<sup>2345</sup>.

#### **Nature of elections**

The nature of Kenyan politics is skewed in favor of men. Campaigning is an expensive affair. It is aggressive and sometimes more often than not violent. In some instances especially during nominations cases of election malpractices, Gender Based Violence (GBV) are experienced. This scares many potential and good women and youth leaders from contesting. It is easy to discern that there is a correlation between the number of aspirants or candidates and that of elected leaders. The idea is that the more women and youth who vie, the more the chances of increasing their representation. Although at the county level article 177 and article 54 (2) have provided for a good framework and balance for inclusion and gender representation, at Parliament we still have no formulae courtesy of lack of legislation on article 100. The need for stricter adherence to Political parties act 2011-revised 2016 regulations

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<sup>2</sup>Gender Policy (2011), GoK, State Department of Gender and Youth Affairs

<sup>3</sup> The Constitution of Kenya (CoK, 2010), Article 10, Articles 27 (8), Article 54 (2), Article 100 & Article 177 (1) (b)

<sup>4</sup> The Supreme Court Advisory Opinion No. 2 of 2012

<sup>5</sup> The Political Parties Act (2011) Section 52(2)

is urgent. The ORPP and IEBC can do better by streamlining their administrative and management including operations of the electoral process to ensure more inclusive society and electoral justice for women and youth.

### **Institutional mechanism and implementation on Not More Than Two thirds Gender Principle**

Multi-stakeholder consultation and engagement framework needs to be developed and the reform agenda agreed upon to move forward the 2022 playing field, to be free, fair and accountable to women and youth of this country. The need to implement article 100 should be priority for all actors. In the absence of a quick balance or win-win solution, the opinion for judicial decision via strategic litigation can be pursued to enhance a more democratic culture and electoral justice.

### **1.3.Rationale for the Scorecard**

This study offers statistical analysis for providing evidence based advocacy. The data, figures and information contained in this report, are critical for highlighting grey areas, as well as recommendations that if acted upon will immensely create gender equality and equity in Governance. The question of low representation of women and youth in elective and appointive positions requires both policy and legislative reforms on the one end and Political commitment and goodwill on the other by key institutions charged with the mandate of ensuring the full implementation of the Constitution. The objective of this study was to find out the status of women and Youth in post 2017 general election outcome and their representation at the national Executive level, County Government executive level, County Assembly and County Departmental Committees.

### **1.4.Approaches and Methodology Adopted**

This study first zeroed on legal Notices published by IEBC on the subject of 2017 election outcome for various positions including: MPs, Senators, Governors, County Women Representatives (CWR), and MCAs. The analysis sought to find out representation of Women, men, youth, PWD, Minorities and marginalized groups in society. The research therefore adopted a desk study (literature Review) and utilized secondary data from IEBC, mzalendo.com website, Ministry of Foreign affairs website among others.

The key areas of focus were discussed by CRAWN Trust and Youth Alive Kenya. These were included in the TORs and inception report.

### **1.5. Study Design**

This research adopted a descriptive design. A complete Census of all Nominated and Elected Representatives from the 8<sup>th</sup> August 2017 General Elections were considered.

### **1.6. Structure of this Report**

The report starts with an executive summary, followed by chapter one. In this chapter, we provide the study objectives, the rationale, approach and methodology utilized, the structure of this report and finally the study limitations. Chapter two, looks at the policy and legal framework. It starts with international, regional and finishes with national laws and frameworks on gender. Chapter three, provides for how data was generated and analyzed. Chapter four discusses key study findings and their implication of the question of two thirds gender principle. Finally, chapter six provides concluding comments and recommendations followed with list of referenced materials.

### **1.7.Limitations of the Study**

The study experienced the following shortcomings:

- 1.7.1. Knowing or ascertaining age sets for elected leaders is elusive, such data is not well captured or documented and is still a major research and documentation challenge. For instance [mzalendo.com](http://mzalendo.com) does not give individual age of Members of Parliament however it categorizes them as below 35 years of age and hence perceived as youth.
- 7.1.2. Means of verifying marginalized and interest group representation as well as minorities is still a challenge. Voters have not reached the level of voting for “interests” for example minorities however the provision is exceptional to nomination process. Key research for identifying and legally noting who minorities are and rationale for that categorization should be politically, policy-wise and legally sound.
- 7.1.3. Finding disaggregated data by gender, age, disability etc is still a challenge in research and most institutions fall short on delving deeper into analysis and capture of such data especially IEBC and Parliament.
- 7.1.4. The geographical coverage of all the 47 Counties to analyze county Executive Committees and County assembly Committees will be time consuming and very expensive. This Budget is not forthcoming.

## CHAPTER TWO:KENYA'S GENDER EQUALITY AND EQUITY POLICY AND LEGISLATIVE FRAMEWORKS

### 2.1. International Regime

Article 2 (5) and 2 (6) of the Constitution of Kenya states that:

- (5) *The general rules of international law shall form part of the law of Kenya.*
- (6) *Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.*

The table below summarizes International Instruments signed and ratified by Kenya Government as relates to Gender Equality and Equity.

**Table 2.1: International Instruments on Gender Equality and Equity**

<b>Instrument</b>	<b>Specific Provision and Import</b>
Universal Declaration of Human Rights(UDHR)- <b>Article 21</b>	Recognition of the right of every citizen to take part in the government of their country either directly or indirectly <b><i>(Women and youth , PWD all included)</i></b>
African Charter on human and People's rights(ACHPR) - <b>Article 9 &amp; Article13</b>	The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ("Maputo Protocol") Requires states to ensure that "women are represented equally at all levels with men in all electoral processes  Further Requires states to ensure increased and effective representation and participation of women at all levels of Decision-Making Processes
International Covenant on Civil and Political Rights (ICCPR)- <b>Article 25</b>	
Convention on the Elimination of All Forms of Discrimination Against Women(CEDAW)- <b>Articles 2, 4, 7, 24 &amp; 44</b>	requires States Parties to the Convention to ensure that women's rights to " <i>participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government</i> Also aims atelimination of all forms of discrimination against women and promotion of equality, and equity
The Beijing Platform for Action Declaration (BPfA,1995)	Identified the need for power and decision making structures that enable women especially Right to participation in Governance processes

### 2.2. Regional Frameworks

The African Charter on Democracy, Elections, and Governance, aims to promote representative governance and promote and protect the full realization of rights. At the Regional level we have a gender agenda at the African Union, and the East African Community levels especially:

- i. Implementation of African Union agenda on gender
- ii. Implementation of the East African Community agenda on gender
- iii. Implementation of the United Nations Sustainable Development Goal Number 5

These agendas are supposed to be mainstreamed in the national implementation policies and plans. The lead Ministry is the State Department of Gender.

## 2.3. NATIONAL POLICIES, LAWS AND FRAMEWORKS

### 2.3.1. Institutional Mechanisms

The Mandate of the State Department of Gender inter alia is tasked with obligation of Implementing Constitutional Provisions as relates to:

- i. Article 10: to apply the constitutional values and principles in the ,making and implementation of policy-equity, social justice, inclusiveness, equity, human rights, non-discrimination and protection of the marginalized;'
- ii. Articles 27 (6), 56:the state to take action including affirmative action to redress disadvantages suffered by different interest groups that suffer discrimination.
- iii. Article 27 (8): Implementation of the two third gender principle in appointive and elective bodies
- iv. Article 100: promotion of representation in Parliament of women, persons with disability, Youth, Ethnic Minorities and other marginalized communities.

### 2.3.2. National Programs and Mechanisms

The state Department of Gender is further tasked with the implementation of National special programs aimed at women's economic empowerment. These include: **Uwezo Fund, Women Enterprise Fund, and Youth Enterprise development Funds**. The extent of success is not a subject of this Scorecard. However, it is directly linked to women's capacity to engage in elections.The **Vision 2030**, is the current Blue print for implementation of national goals.It has an agenda on Gender equity and equality.

### 2.3.3: The Constitution of Kenya: Article and its Provisions- Gender Equality and Equity

**Table2.2: Constitutional Provisions on Gender Equality and Equity**

Article	Provision of the Constitution of Kenya (2010)
10(2)	<b>National values and principles</b> The national values and principles of governance include— (a) patriotism, national unity, sharing and devolution of power, the <b>rule of law</b> , democracy and <b>participation of the people</b> ; (b) <b>human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized</b> ; (c) good governance, integrity, transparency and accountability; a and(d) Sustainable development.
23	<b>Implementation of rights and fundamental freedoms</b> All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, and youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities
27	<b>Equality and freedom from discrimination</b> (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. (4) The State 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. (6) To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including <b>Affirmative Action programs</b> and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

	<p>(8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle <b>that not more than two-thirds</b> of the members of elective or appointive bodies shall be of the same gender.</p> <p>Similar provisions on gender equity are contained in Article 175(c) and 197(1)</p>
29	<p><b>Freedom and security of the person</b></p> <p>Every person has the right to freedom and security of the person, which includes the right not to be—</p> <p>(c) subjected to any form of violence from either public or private sources;</p> <p>(d) subjected to torture in any manner, whether physical or psychological;</p>
38(2)	<p><b>Political rights</b></p> <p>(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for—</p> <p>(a) any elective public body or office established under this Constitution; or</p> <p>(b) any office of any political party of which the citizen is a member.</p> <p>(3) Every adult citizen has the right, without unreasonable restrictions—</p> <p>(a) to be registered as a voter;</p> <p>(b) to vote by secret ballot in any election or referendum; and</p> <p>(c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.</p>
54(2)	<p><b>Persons with Disabilities</b></p> <p>The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.</p>
55(b)	<p><b>Youth</b></p> <p>The State shall take measures, including 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</p>
55(a)	<p><b>Minorities and marginalized groups</b></p> <p>The State shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups—participate and are represented in governance and other spheres of life</p>
81	<p><b>General principles for the electoral system</b></p> <p>The electoral system shall comply with the following principles—</p> <p>(b) not more than two-thirds of the members of elective public bodies shall be of the same gender;</p> <p>(c) fair representation of persons with disabilities</p>
90(2)(b)	<p><b>Elections for party list seats</b></p> <p>The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—except in the case of the seats provided for under Article 98 (1) (b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed;</p>
91(1)	<p><b>Basic requirements for political parties</b></p> <p>(1) Every political party shall—</p> <p>e) respect the right of all persons to participate in the political process, including minorities and marginalized groups;</p> <p>(f) respect and promote human rights and fundamental freedoms, and gender equality and equity;</p> <p>(g) promote the objects and principles of this Constitution and the rule of law;</p>
100	<p><b>Promotion of representation of marginalized groups</b></p> <p>Parliament shall enact legislation to promote the representation in Parliament of—</p> <p>(a) women;</p> <p>(b) persons with disabilities;</p> <p>(c) youth;</p> <p>(d) ethnic and other minorities; and</p> <p>(e) marginalised communities.</p>



## 2.3.4. Institutional Performance

### **Mandate of IEBC**

*The institution of IEBC is charged with the mandate to:*

- *Regulate the conduct of political parties in Kenya*
- *Put in place effective and efficient operational, administrative and management of elections meaning overseeing and conducting Elections in Kenya*
- *Auditing political party lists as relates to Nomination party lists for checking inclusivity, gender representation factoring in not more than two thirds sensitivity and responsiveness.*

### **Mandate of ORPP**

*The Office of Registrar of Political Parties is instrumental in regulating political party as well as monitoring party activities especially party lists arising from party primaries. The ORPP has had to deal with absence of substantive Registrar, It has not been effective in monitoring and auditing party lists as stipulated in the political party ct, Elections act and Regulations.*

### **National Gender and Equality Commission (NGEC)**

- *NGEC was established under Article 59 of the Constitution of Kenya. Its mandate is to act as a lead agency on gender mainstreaming.*
- *It plays a pivotal role in policy formulation and legislation on two thirds gender principle*
- *It has strategic litigation obligation too*

### **Role of Political Parties**

1. Political Parties are effective vehicles for PWD, Youth, Minorities and women to ascend to positions of authority and power in society through elective and appointive processes of governance, and therefore ensure equity in representation,
2. Parties are significant in nurturing democracy and sustaining the principle of gender equality and equity; by allowing vibrant youth and women wings to thrive, organize, mobilize and engage on different political platforms for visibility and enhanced voice in governance. These processes should be strengthened by objective appointments and non-partisan nomination processes that are free and fair and devoid of violence or intimidation for aspirants. Parties in essence are supposed to implement Affirmative action activities and initiatives to promote youth, women, minorities and people with disability.
3. Lastly, political parties have an obligation to comply with election code, Laws and Regulations, especially concerning nominations and party lists to ensure gender sensitivity and responsiveness.

## **2.4. Implications for Gender Equality and Equity**

### **2.4.1. Representation based on Disability**

Seventeen out of Forty Seven Counties did not nominate PWD to their County assemblies. The error is not on the County Government but lack of sensitivity on the part of the Political Parties. The Penalty should be aimed at these institutions for failure to comply with provisions of Article 54 (2). There seems to be a wrong assumption that in these counties there are no persons living with disability. These counties include: ***Kwale, Kilifi, Taitaveta, Makueni, Nyandarua, Nyeri, Murang'a, Nakuru, Narok, Kericho, Bungoma, Busia and Kisii County assemblies.***

The fact that 36% of the Counties did not Comply, this study can only recommend that CRAWN Trust should pursue a path of strategic litigation to compel political parties to adhere to the principles enshrined in the Constitution of Kenya (2010). Secondly, All counties and political parties should develop Disability sensitive and responsive political policies and a Bill in line with article 54 (2) and article 100 of the Constitution.

#### **2.4.2. Youth Representation**

There were 75 youth Nominated to all the 47 County assemblies. The following Counties including: Marsabit, Nyandarua, Laikipia and Vihiga did not nominate any Youth to their County assembly. The interpretation could be that more youth were elected at the ballot not warranting more Nominations of this category of citizens, alternatively it was an oversight on the part of the Political Parties. The fact is that four -out- of forty seven counties, represent 9% non-compliance to Article 54(2), 55 and 56 of the Constitution of Kenya 2010.

This study recommends the development of County level and political party level Youth sensitive and responsive policies in line with the Constitution of Kenya.

#### **2.4.3. Representation based on Marginalization**

The study found out that 41 out of 47 Counties did not nominate marginalized Persons to their respective County assemblies. This is in total disregard to constitutional provisions on minorities and marginalised groups and interest groups. If the Counties could comply with these provisions, the numbers of such categories of citizens would increase hence representation. Only 63 minority nominated to County assemblies countrywide. Seven (7) marginalized persons nominated in 6 Counties.

Eleven out of Forty Seven Counties did not nominate minorities. These include: Wajir, Mandera, Isiolo, Turkana, Samburu, Elgeyo-Marakwet, Nandi, Siaya, Migori, Kisii and Nairobi. These counties need to be alive to Provisions of Article 10 and embrace the principle of diversity in representation.

#### **2.4.4. Legislative Gaps - pending Laws, Bills**

Section 36(2) of the ElectionsAct (2011) gives a general requirement for the prioritization of Persons With Disabilities, the Youth and any other candidate representing a marginalized group, the Act fell short of the type of promotion of marginalized groups as required by Article 100of the Constitution. Whereas the Constitution expects parliament to make laws to govern the nomination of candidates in elections (Article 82, parliament has not included in the election laws the minimum rules to guide the party nomination processes including requiring the IEBC to issue clear regulations for the nomination of candidates to single member seats and Party lists in compliance with its constitutional responsibility under Articles 88 and 90.

#### **2.4.5. Policy Gaps**

1. Lack of a coherent national level strategy or Government program for enhancing women's Political leadership, participation, inclusion and involvement through political, and electoral processes
2. Lack of a cultural diversity policy that addresses stereotypes, myths, misconceptions and fixated mindsets that are inhibitions to women's successful engagement, participation and inclusion in key policy formulation and decision making processes. There need to be a concerted effort by government to address such negative attitudes and perceptions in order to achieve the objectives of gender equality and equity in Kenya.

The Spirit and letter of the constitution is clear on provisions of principle and practice of Gender equality and equity.

3. Inadequate youth sensitive and responsive policy to Constitutional Provisions relating on leadership development, participation and representation in policy formulation and decision making processes. The fact that only 75 youth were nominated as MCAs and 1 as MP and only 2 youth to Senate speaks to this need.

#### **2.4.6. Legal Gaps- Legislation**

4. Devoid of a Gender formulae or enforcement mechanism at Parliament and Senate on the not more than Two Third Principle is wanting. Article 177 as it applies to county assembly is a success story of how effective legislation can address the dilemma of gender representation in legislature. It is incomprehensible why lifting this formula is not forthcoming at Parliament.

#### **2.4.7. Cultural Barriers and Public education gaps**

5. The question of attitudes, Perceptions that construct myths, misconceptions and propaganda around women's leadership capacity, is still a big obstacle. It has since created certain assumptions that inhibit accountable planning, budgetary allocations, policy formulation and legislation. For instance:
  - i. The misconception about Affirmative action Initiatives and their positive impact on society,
  - ii. Assumption about the largeness of parliament (bloated if more women are appointed)and yet there is no more seating arrangement!
  - iii. Assumption about expanded wagebill associated with nomination of more women,
  - iv. Assumption about the progressive nature of the Principle on Not more than Two thirds as a universal principle rather than limited to elective positions,
  - v. Assumption about nomination of women as opposed to women's competitive involvement in politics,
  - vi. A patronizing and male dominance theory type of cultural male chauvinism and patriarchal system with community and political party structures
  - vii. Assumption about women's merit when it comes to appointments and so forth.

#### **2.4.8. Administrative and operational Gaps**

- i. Poor Monitoring for compliance, enforcement of existing laws, poor data capture and disaggregation by youth, age, gender, PWD, Minorities and marginalized by both IEBC and Political Parties. The ORPP seems to paint a picture of helplessness when it comes to seeking greater accountability from political parties to adhere to Regulations.
- ii. Political Parties have weak youth and women wings, they neglect women when it comes to coalition politics, negotiations and involvements, there is witnessed weak internal party democracy when it comes to nominations and party lists- there seems to be a culture of appeasement and seeming to comply rather than making it an integral part of democratization -"a by the way attitude".

The Performance of Political Parties is assessed based on the benchmarks set in the Constitution and Political Parties act 2011 9(revised 2016)

**Table 2.3: The Political Parties Act 2011**

Section	Provision
7(2)	<p><u>Conditions of full registration</u></p> <p>A provisionally registered political party shall be qualified to be fully registered if—</p> <p>(a) it has recruited as members, not fewer than one thousand registered voters from each of more than half of the counties;</p> <p>(b) the members referred to in paragraph (a) reflect regional and ethnic diversity, gender balance and representation of minorities and marginalized groups;</p> <p>(c) the composition of its governing body reflects regional and ethnic diversity, gender balance and representation of minorities and marginalized groups;</p>
25	<p><u>Distribution of the Political Party Fund</u></p> <p>(1) The Fund shall be distributed as follows—</p> <p>(a) ninety-five per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election; and</p> <p>(b) five per cent for the administration expenses of the Fund</p> <p>(2) Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund if—</p> <p>(a) the party does not secure at least five per cent of the total number of votes at the preceding general elections; or</p> <p>(b) more than two-thirds of its registered office bearers are of the same gender</p>
26(1)(a)	<p>Moneys allocated to a registered political party from the Fund shall be used for purposes compatible with democracy including—</p> <p>promoting the representation in Parliament and in the county assemblies of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities;</p> <p>Provided that not less than thirty per cent of the moneys allocated to a political party under section 25 shall be used for the purposes referred to in subsection (1) (a).</p>
The Second Schedule	<p><u>Contents of the Constitution or Rules of a Political Party</u></p> <p>24) Democratic practices that cover gender, affirmative action for minorities and marginalized groups.</p> <p>25) Reflect democratic practices covering human rights and gender.</p>

## CHAPTER THREE: KEY FINDINGS- GENDER AND INCUSIVITY SCORECARD 2017

### 4.1. Introduction

This chapter provides information on the findings of the study and their implications on the principle and constitutional requirement of Not More Than Two Thirds Principle. A critical analysis of secondary data available from the outcome of the August 2017 General Elections was analyzed.

#### 4.1.2. Data Analysis and Interpretation

This Chapter analyzes that based on the performance of women and men, youth and Persons with Disability in reference to the 2017 General Election outcomes. We analyze data at all levels of elective positions starting with The National Assembly, The Senate, 47 County Governments with reference to Governors and Deputy Governors Elected, County Assembly (MCAs) both Elected and Nominated, National Executive (Cabinet) and Diplomatic Missions and Ambassadors.

We further provide interpretation of what the data means and see what strategic issues arise that warrant interventions by CRAWN Trust and Youth Alive Kenya as part of wider Civil Society Strategy. We also, highlight what strategies need to be adopted moving forward on Two Thirds Gender Principle and Requirement (in practice).

**Table 4.1: Legal Provisions on Women leadership in Kenya's electoral process**

	<b>National Assembly</b>	<b>Senate</b>
<b>Elected</b>	290 Members of Parliament elected on Single Constituency  47 Women Represented elected at the County as a single Constituency	47 Senators
<b>Nominated</b>	12 nominated based on Political party lists representing special interests  1 speaker	16 women  2 representatives for youth one male and one female  2 representatives for people with disability being one man and one woman  1 Speaker
<b>Total</b>	<b>350</b>	<b>68</b>

### 4.2. Key Study Findings

#### 4.2.1 The National Assembly (NA)

The National Assembly (NA) has 290 directly elected Members. In the concluded 2017 General Elections, 267 men and 23 women were elected at the ballot. Further, we have twelve (12) Nominated Members to

the National Assembly, six (6) of which are men and six (6) Men respectively. Additionally, we have exclusively 47 women elected as County Women Representatives to National Assembly. Finally, we have one (1) speaker. In total we have 350 Members.

**Table 4.2: Elected and Nominated Members of the National Assembly (2017)**

Criteria	Male	Female	Total	Percentage (%) of Women
Elected Member	267	23	290	8
Nominated Member	6	6	12	50
Affirmative Action Seats	0	47	47	100
Speaker	1	0	1	0
<b>Total</b>	<b>274</b>	<b>76</b>	<b>350</b>	<b>22</b>

*In order to comply with the Not more than Two Thirds Principle, the NA ideally should have 117 women representation as a bare Minimum and 232 on the majority (maximum representation).*

**Table 4.3: Nominated Members of the National Assembly 2017**

NAME	GENDER	CATEGORY
David Ole Sankok	M	PWD
Mucheke Halima Yussuf	F	Worker
Gideon Keter	M	Youth
Jeniffer Shamalla	F	Special Interest
Maina Kamanda	M	Special Interest
Cecily Mbarire	F	Special Interest
Prof. Jacqueline Adhiambo Oduol	F	Marginalized Woman
Wislon Sossion	M	Worker
Denitah Ghati	F	PWD
Godfrey Osotsi	M	Worker
NasriSahal Ibrahim	F	Minority
Sammy Kipkorir Seroney	M	Worker

#### **4.1.1 Representation of People With Disability in Parliament (NA & Senate) (2017)**

From Table 4.3 only One person was nominated to National assembly

#### **4.1.2. Minorities Interests in Parliament 2017**

From Table 4.3 only one person was nominated to National assembly

#### **4.1.3. Marginalized Groups Representation in Parliament 2017**

From Table 4.3 only one person was nominated to National assembly

### **4.4. The Senate**

The Senate has a total of 47 elected Members. Further, there are 20 nominated members to the Senate; comprising of 2 males and 18 females. A further breakdown of the 18 females nominated as senators, 16

represent women, 1 represents the Youth constituency and 1 represents the constituency of Persons with Disabilities (PWDs).

**Table 4.4: Elected and Nominated Members of the Senate (2017)**

Criteria	Male	Female	Total	Percentage (%) of Women
Elected	44	3	47	6
Nominated	4	16	20	80
Speaker	1	0	1	0
<b>Total</b>	<b>49</b>	<b>19</b>	<b>68</b>	<b>28</b>

In reference to The Constitution of Kenya (CoK, 2010), Article 98 (a),(b),(c) and (d), therefore, The Senate does not meet the minimum threshold on Not More than Two Thirds Principle. Ideally the Senate should have 23 women to be able to meet this requirement.

#### **4.1.3. Representation of Youth in Parliament (NA & Senate) (2017)**

In this analysis, reference is made on persons below age of 35 years. According to Mzalendo.com <sup>6</sup>, Parliament had a total of 34 youthful leaders.

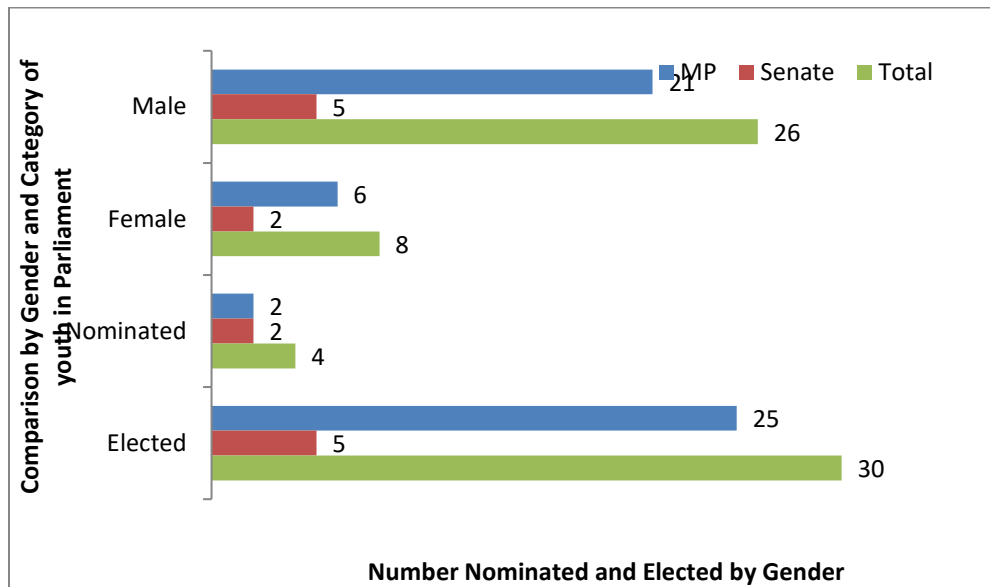
**Table 4.5: Number of Youthful MPs and Senators in Parliament 2017**

Position	Male	Female	Nominated	Elected
MP	21	6	2	25
Senate	5	2	2	5
<b>Total</b>	<b>26</b>	<b>8</b>	<b>4</b>	<b>30</b>

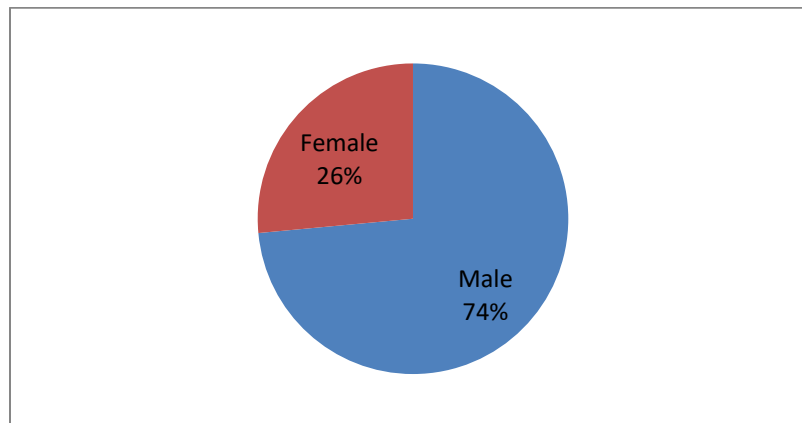
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<sup>6</sup>[www.info@mzalendo.com](http://www.info@mzalendo.com), 6.4.2018, 3.30 pm

**Figure 4.1.1: Representation of Youthful Senators and MPs both Nominated and Elected in 2017**

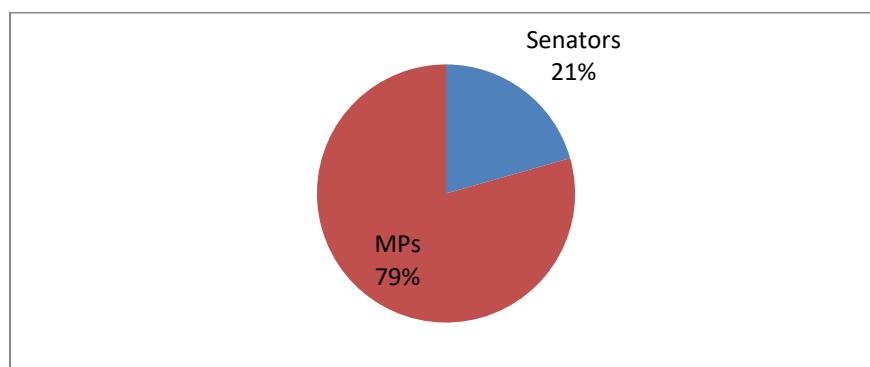


**Figure 4.1.2: Representation of Male and Female in Parliament in 2017 by Percentage (%)**

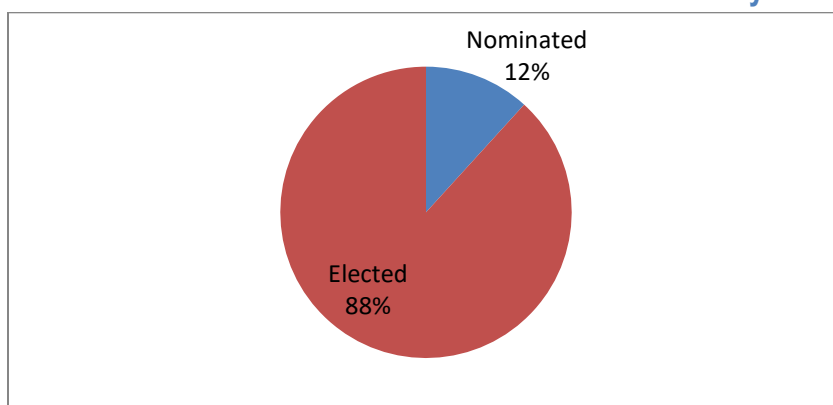




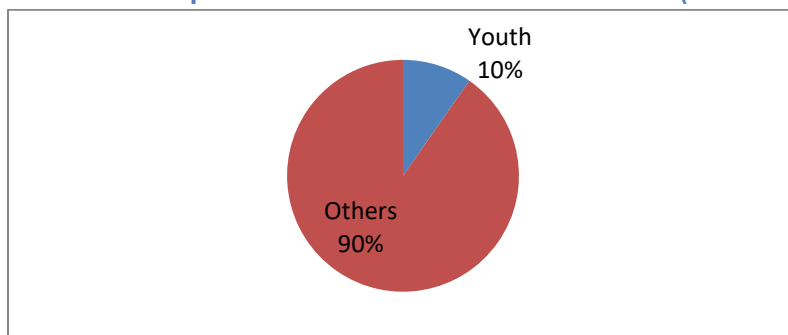
**Figure4.1.3 : Percentage (%) of youthful Senators and MP Representatives in Parliament in 2017**



**Figure4.1.4 :Youthful Senators and MP in Parliament in 2017 by Nomination & Elected by (%)**



**Figure 4.1.5: Total representation of Youth In Parliament (NA & Senate) 2017**



The 90% represent men and women who do not fall in the category of Youth. The statistic also covers PWD, Marginalized and Minority groups. See also table 4.1 for reference.

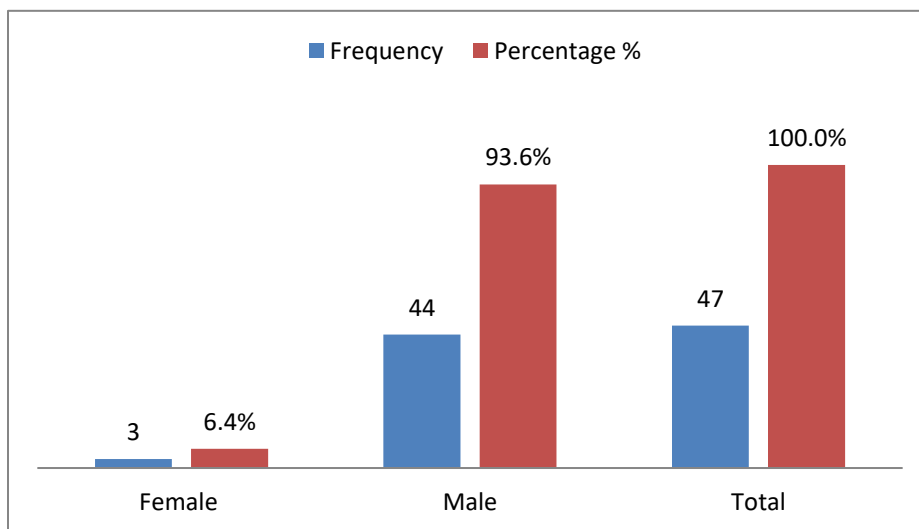
**Table 4.6: Female Representation in the Senate**

Senate Female Representation	Frequency
Elected	3
Nominated	7
<b>Total</b>	<b>10</b>

**Table 4.7: Elected Female Senators by Percentage (%) 2017**

Gender	Frequency	Percentage (%)
Male	3	6%
Female	44	94%
<b>Total</b>	<b>47</b>	<b>100.0</b>

**Figure 4.1.6: Elected Senators by Gender and by Percentage (%) 2017**



**Table 4.8: Total Gender Representation as a Percentage (%) in Senate 2017**

Gender	Frequency	Percentage (%)
Male	47	70
Female	20	30
<b>Total</b>	<b>67</b>	<b>100</b>

## NATIONAL ASSEMBLY COMMITTEE MEMBERSHIP BY GENDER 2017

Table 4.9: Gender Representation on NA Sector Committees 2017

NAME OF COMMITTEE OF THE NATIONAL ASSEMBLY	GENDER		TOTAL COMMITTEE MEMBERS	% OF FEMALE MEMBERS PER COMMITTEE
	MALE	FEMALE		
Security & Administration Committee	19	17	36	47
Committee on Agriculture & Livestock	18	14	32	44
Committee on Communication & Information	19	14	33	42
Committee on Defense & Foreign Affairs	19	16	35	46
Committee on Education & Research	19	14	33	42
Committee on Energy	19	14	33	42
Committee on Environment & Natural Resources	19	13	32	41
Committee on Finance & Planning	19	17	36	47
Committee on Health	19	15	34	44
Committee on Administration of Justice & Legal Affairs	19	13	32	41
Committee on Labour & Social Welfare	19	12	31	39
Committee on Lands	19	14	33	42
Committee on Sports, Culture & Tourism	19	12	31	39
Committee on Trade, Industry & Cooperatives	18	15	33	45
Committee on Transport, Public Works & Housing	19	17	36	47
Committee on Public Accounts	19	17	36	47
Committee on Public Investments	19	17	36	47
Special Funds Accounts Committee	19	15	34	44
Budget Appropriation Committee	25	19	44	43
Committee on Implementation	23	23	46	50
Committee on Delegated Legislation	22	17	39	44
Committee on Regional Integration	22	17	39	44
Committee on Constituencies Development Fund	19	15	34	44
Committee on Constitution Implementation Oversight	23	18	41	44
Committee on National Cohesion & Equal Opportunities	23	15	38	39
Committee on Parliamentary Broadcasting & Library	23	13	36	36
Committee on Members Service & Facilities	14	6	20	30
<b>Total Members</b>	<b>534</b>	<b>409</b>	<b>943</b>	<b>43</b>

There are 27 National Assembly Committees. In general, except one committee, the committee on Members' Service and Facilities (MS & F) which had 30% female representation, the rest met the not more than two third gender rule. Overall, women representation in National Assembly Committee's is at 43%, which is significant.

## SENATE COMMITTEE MEMBERSHIP BY GENDER 2017

**Table 4.10: Gender Representation on Senate Sector Committees 2017**

<b>Sector Committee of the Senate</b>	<b>Male</b>	<b>Female</b>	<b>Total Members</b>	<b>Female Percentage</b>
Committee on Agriculture, Livestock & Fisheries	8	6	14	43%
Committee on Education	9	6	15	40%
Committee on ICT	9	7	16	44%
Committee on Roads & Transport	9	7	16	44%
Committee on Energy	9	5	14	36%
Committee on Finance and Budgeting	9	7	16	44%
Committee on Health	9	5	14	36%
Committee on Justice, Legal Affairs & Human Rights	9	7	16	44%
Committee on Devolution & Inter-Governmental Relations	9	0	9	0%
Committee on Labour & Social Welfare	9	8	17	47%
Committee on Lands, Environment & Natural Resources	9	7	16	44%
Committee on National Cohesion & Equal Opportunity	9	5	14	36%
Committee on national Security, Defense & Foreign Affairs	9	5	14	36%
Committee on Trade, Tourism & Industrialization	9	6	15	40%
Committee on Senate Business	12	9	21	43%
Committee on Procedures & Rules	6	4	10	40%
Liaison Committee	17	17	34	50%
Committee on Public Accounts & Administration	9	7	16	44%
Committee on delegated Legislation	9	6	15	40%
<b>Total Membership in Senate Committees</b>	<b>178</b>	<b>124</b>	<b>302</b>	<b>41%</b>

Table 4.10, indicates that with the exception of Committee on Devolution and Inter-Governmental Relations which had No female representation, all the other 18 committees met the two thirds gender principle and requirement. Overall, women had 41% representation across the committees. This was slightly lower than National assembly representation by 2%.

## NATIONAL GOVERNMENT

### 4.2.0. THE EXECUTIVE

#### 4.2.1. Cabinet (CS Appointments)

There were 21 line Ministries and 22 Cabinet Secretaries. Hon. Raphael Tuju was appointed to the cabinet without portfolio. There were six (6) females appointed to the National Government Cabinet. These represented 26.5%.

#### 4.2.2. Chief Administrative Secretary (CAS)

There are 21 Chief Administrative Secretaries in the current administration and only three were female representing 14%

#### 4.2.3. Principal Secretary (PS)

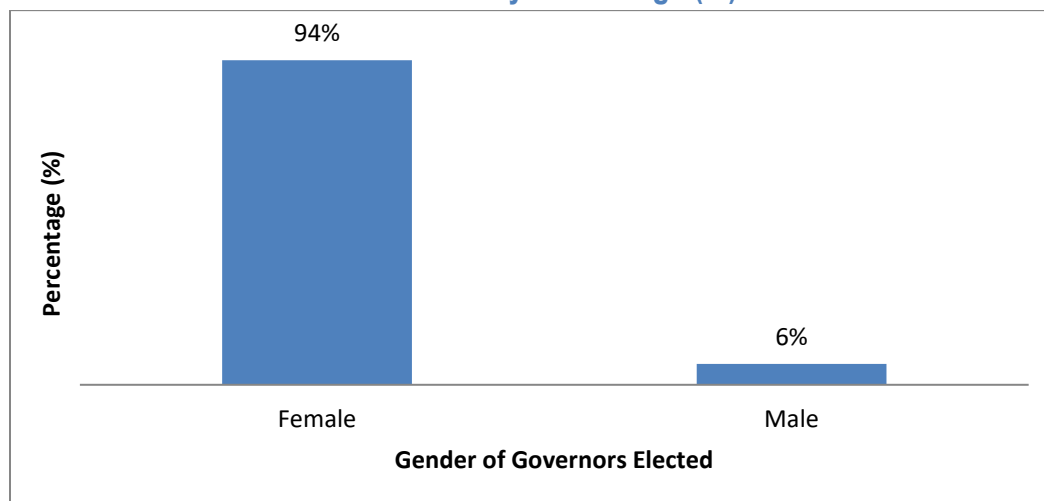
There were thirty five (35) slots for Permanent Secretaries. Eight Women (8) were appointed against 27 males. This represented 23%.

## 4.3. COUNTY GOVERNMENT-ANALYSIS OF DEVOLVED SYSTEM OF GOVERNMENT

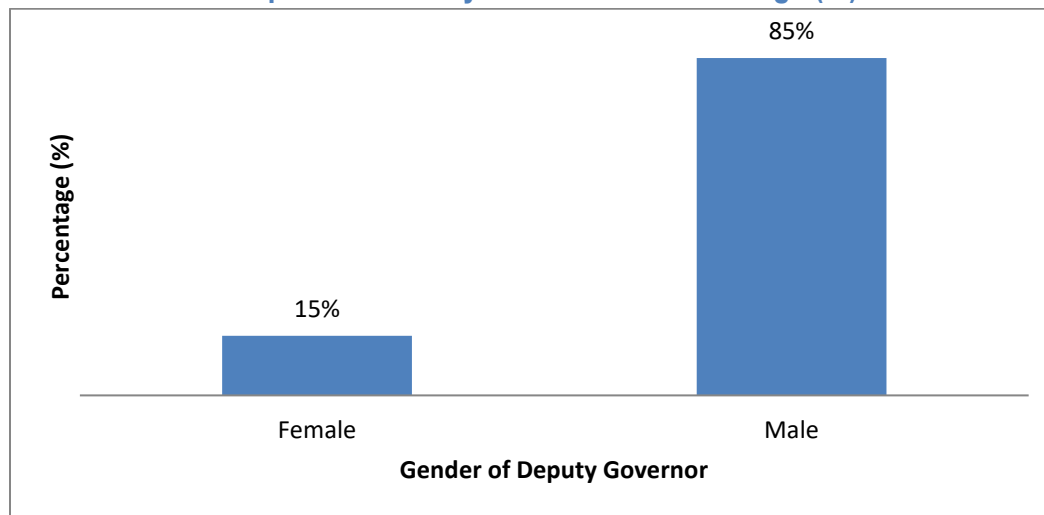
**Table 4.11 Gender Representation Among Elected Governors 2017**

Gender	Frequency	Percentage (%)
Male	44	94
Female	3	6
Total	47	100

**Figure 4.3.1: Gender of Elected Governors by Percentage (%) 2017**



**Figure 4.3.2: Total DGs Representation by Gender and Percentage (%) 2017**



**Table 4.12: Total Number and Percentage (%) of women Representation in all 47 County Assemblies**

Criteria	Male	Female	Total	Percentage (%) of Women
Elected	1353	97	1450	7
Nominated	97	650	747	87
Speaker	42	5	47	11
<b>Total</b>	<b>1492</b>	<b>752</b>	<b>2244</b>	<b>34</b>

By the token of Article 177, County Assembly Representation (globally) meets the threshold of two thirds Rule requirement.

**Table 4.13: Total Aggregate Representation by MarginalizedList 2017**

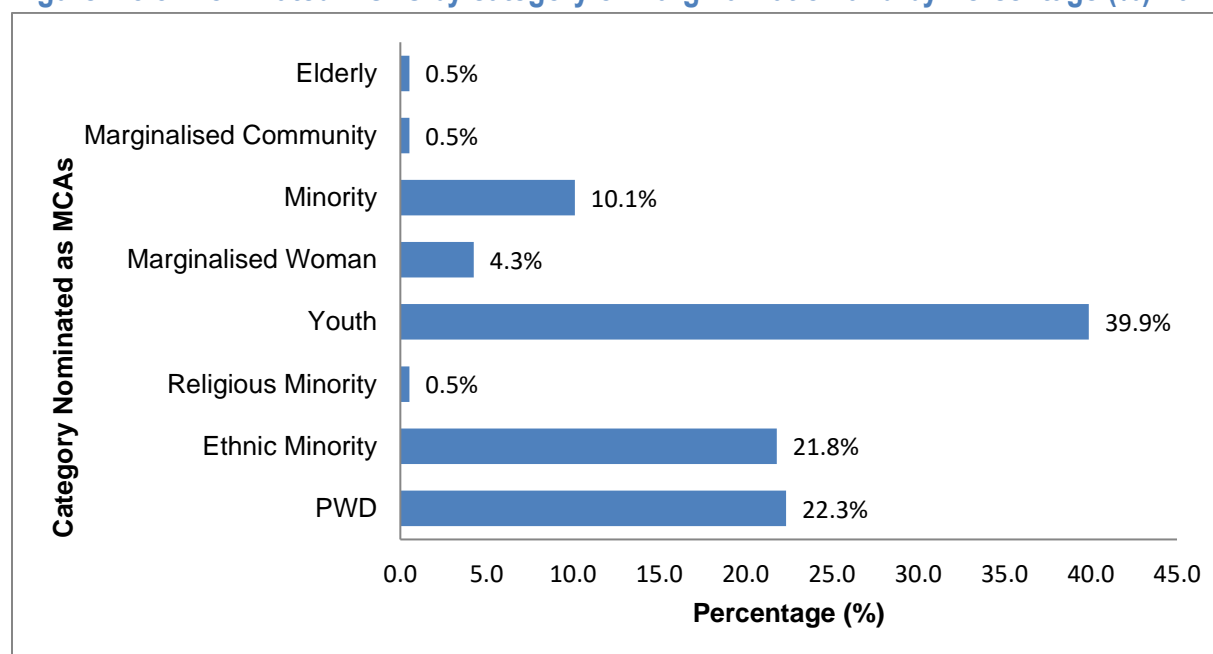
County No.	PWD	Ethnic Minority	Religious Minority	Youth	Marginalized Woman	Minority	Marginalized Community	Elderly	Total
1	1	1	1	1	0	0	0	0	4
2	0	1	0	1	1	1	0	0	4
3	0	2	0	1	0	0	1	0	4
4	1	0	0	2	0	1	0	0	4
5	1	0	0	1	0	1	0	1	4
6	0	3	0	1	0	0	0	0	4
7	1	1	0		2	0	0	0	4
8	1	0	0	3	0	0	0	0	4
9	3	0	0	1	0	0	0	0	4
10	1	2	0	0	0	1	0	0	4
11	1	0	0	3	0	0	0	0	4
12	1	2	0	1	0	0	0	0	4
13	1	1	0	2	0	0	0	0	4
14	1	1	0	2	0	0	0	0	4
15	2	1	0	1	0	0	0	0	4
16	2	1	0	1	0	0	0	0	4
17	0	1	0	3	0	0	0	0	4
18	0	4	0	0	0	0	0	0	4

19	0	2	0	2	0	0	0	0	4
20	1	1	0	2	0	0	0	0	4
21	0	2	0	2	0	0	0	0	4
22	1	1	0	1	0	1	0	0	4
23	0	0	0	3	1	0	0	0	4
24	0	2	0	2	0	0	0	0	4
25	2	0	0	2	0	0	0	0	4
26	1	0	0	2	0	1	0	0	4
27	1	1	0	1	0	1	0	0	4
28	2	0	0	2	0	0	0	0	4
29	2	0	0	2	0	0	0	0	4
30	0	0	0	3	0	1	0	0	4
31	0	2	0	0	0	2	0	0	4
32	0	1	0	1	0	2	0	0	4
33	0	0	0	2	0	2	0	0	4
34	2	1	0	1	0	0	0	0	4
35	0	0	0	2	0	2	0	0	4
36	1	0	0	2	0	1	0	0	4
37	2	1	0	1	0	0	0	0	4
38	2	1	0	1	0	0	0	0	4
39	0	1	0	2	0	1	0	0	4
40	0	2	0	1	1	0	0	0	4
41	1	0	0	2	1	0	0	0	4
42	1	1	0	1	0	1	0	0	4
43	1	1	0	2	0	0	0	0	4
44	3	0	0	1	0	0	0	0	4
45	0	0	0	2	2	0	0	0	4
46	1	0	0	3	0	0	0	0	4
47	1	0	0	3	0	0	0	0	4
TOTAL	42	41	1	75	8	19	1	1	188

**Table 4.14: Percentage (%) by category of Nominated Members of County Assembly 2017**

Category	Percentage (%) of Nominated Members
PWD	22.3
Ethnic Minority	21.8
Religious Minority	0.5
Youth	39.9
Marginalized Woman	4.3
Minority	10.1
Marginalized Community	0.5
Elderly	0.5
<b>Total</b>	<b>100.0</b>

**Figure 4.3.3: Nominated MCAs by category of Marginalization and by Percentage (%) 2017**



A critical look at the Gender Top Up, it explains the fewer number of marginalized women nominated. The total gender top up across the 47 Counties was 559, while the total number of marginalized list came to 188 adding up to 747 women nominated to the County assemblies. Unlike the case of the National assembly, where there is no formulae for nominations to achieve the Not More Than Two Thirds Gender Principle and Rule, The county Assemblies enjoy the provisions of article 177, Constitution of Kenya (2010).



**Table 4.15: Percentages (%) of Female Nominated MCAs by Category of Marginalization 2017**

Category	Male	Female	Total	Percentage % of Female as a Total of Nominated MCAs	Percentage % of Female by Category as a Total of Nominated MCAs
PWD	15	27	42	14.4	64
Ethnic Minority	22	20	42	10.6	48
Religious Minority	0	1	1	0.5	100
Youth	41	34	75	18.1	45
Marginalized woman	0	6	6	3.2	100
Minority	12	8	20	4.3	40
Marginalized community	1	0	1	0.0	0
Elderly	1	0	1	0.0	0
<b>Total</b>	<b>92</b>	<b>96</b>	<b>188</b>		

The total nominated marginalized groups represent 12%, those elected women MCAs 13% and Nominated top up 75%. More specifically the categories are hereby analyzed.

#### 4.3.1. Representation of People With Disability as MCAs

There was a total of 42 nominated MCAs were PWDs, representing 6.5%. This figure could have risen were the following Counties nominated PWD: Kwale, Kilifi, TaitaTaveta, Makueni, Nyandarua, Nyeri, Murang'a, Turkana, West Pokot, Baringo, Laikipia, Nakuru, Narok, Kericho, Bungoma, Busia and Kisii. Meaning 36.2% of the Counties denied PWD an opportunity to serve their Counties. And therefore did not meet the requirements of Article 54 (2) of the Constitution.

#### 4.3.2. Representation of Youth in County Assemblies 2017

There are 75 youth nominated to the County Assemblies with *Wajir, Isiolo, Makueni, Turkana, Baringo* and *Nairobi* Counties nominating the highest number at 3 each. Counties that did not nominate youth to their County Assemblies include *Marsabit, Nyandarua, Laikipia* and *Vihiga* Counties.

#### 4.3.3. Representation of Marginalized Persons 2017

There are 7 marginalized persons nominated to the County Assemblies with Kisii County nominating the highest number (3). *Kwale, Kilifi, Turkana, Busia* and *Siaya* Counties nominated one marginalized person each. The rest of the counties did not nominate marginalized persons.

#### 4.3.4. Representation of Minorities as MCAs 2017

There are 63 persons from minority groups nominated to the County Assemblies. *Nyandarua* and *Laikipia* Counties have nominated the highest number at 4 each while *Wajir, Mandera, Isiolo, Turkana, Samburu, Elgeyo-Marakwet, Nandi, Siaya, Migori, Kisii* and *Nairobi* Counties did not nominate any.

#### 4.3.5. Aggregated data on Nominations for MCAs 2017

This translates to 188 nominated members of County Assemblies from special interest groups. Of these, 90 are female and 98 are male. In total, there are 747 nominated members of the County Assemblies.

**SUMMARY : Comparative Analysis 2013-2017 General Election Outcomes by Gender by %**

<b>POSITION</b>	<b>2013</b>	<b>2017</b>	<b>% INCREASE OR DECREASE</b>
NATIONAL ASSEMBLY	19%	22%	3% INCREASE
SENATE	0%	6%	6% INCREASE
GOVERNORS	0%	6%	6% INCREASE
DEPUTY GOVERNORS	19%	15%	4% DECREASE
MCA	34%	34%	NO CHANGE
CABINET (CS)	25%	26.50%	1.5% INCREASE

Overall, there was significant increase across all elective and appointive positions with an exception of deputy Governors that decreased with 4%.

## CHAPTER FOUR: MAPPING EFFECTIVE STRATEGIES

### Introduction

The strategies highlighted in this Scorecard are not limited to one institution. They need multi-stakeholder discussions, participation and consensus. They range from policy review, legislation and advocacy campaigns.

### Key strategies for moving Two thirds Gender principle forward

1. Improve constitutional, Policy and legislative environment for the implementation of constitutional provision on Not- more- than Two -thirds gender requirement and Principle. The Stakeholders could start by developing a comprehensive framework for engagement and agree on a minimum long term win-win electoral and political reform package.
2. The Civil Society led by CRAWN Trust and Youth Alive Kenya should develop a framework for input in the legislative agenda on two thirds principle that encompass both policy and Bill on Article 100 of the Constitution of Kenya.
3. Coordinated mechanism for data and information sharing aimed at improving administrative and operational frameworks. These will enable the Registrar of Political Parties (RPP) and the IEBC to streamline regulations for electoral process. There is a strong need for review of existing Regulations on party lists.
4. Develop a national program that effectively empowers the women for candidature. These would include short term trainings, Information sharing, profiling of women, mentoring among other effective strategies to ensure women's enhanced voice and expanded space in the political arena. This role is not a sole responsibility for civil society but IEBC too to provide civic education too to women constituency.
5. Develop a public education program to deliver both civic education and voter education. This would ensure that a change of attitude and mindsets that approve of the public to equally vote for women and youth to leadership positions.
6. Develop a program to initiate political party reform that ensures political structures, internal party environment and operations are sensitive and responsive to women and youth need for representation. This would include financing based on gender, strengthening of Youth and Women wings borrowing from ANC party in South Africa.
7. CSO and NGEC should have a vibrant Research, Monitoring and Evaluation Frameworks to be able to track progress on policy, legislation, representation and inclusivity in the county and be able to develop not only a database but disaggregated data management system including youth, women, and their age, disability, minority, marginalized persons who register, vote, are elected and nominated to different positions
8. County level youth policies should be developed and youth friendly counties should be motivated
9. Enhanced civic duty on the part of role of Civil Society to provide civic education
10. Integrate and fund Use of Research to inform advocacy campaigns, policy formulation and legislation

## CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

### 5.1 Introduction

This chapter gives the study conclusions and makes general and specific recommendations to implement the not more than two thirds constitutional gender requirement.

### 5.2. Conclusions

The study conclude that a number of institutions have failed the Kenyan women and youth in their quest for inclusion, representation and participation in political and electoral processes. For instance the G as chief legal government advisor has not provided a legal solution to the dilemma surrounding enactment of a law to operationalize article 100 of the Constitution of Kenya. Rather, the advisory sought in Court and the Supreme Court opinion have not helped to advance or implement the not more than two third principle in full. Parliament on the same toke has failed to pass laws to implement the same.

The study concludes that, there are still policy and legal challenges facing women and there is need to streamline the policy on Gender and for Parliament to legislate on article 100. There is further need to review and amend a number of national laws including: political parties Act, Elections Act and Election related Regulations.

The study concludes that the Not More than Two Thirds provision has worked at County assembly level, but has not been effectively achieved at Parliament.

The study also concludes that many County assemblies failed the test of article 54 (2) on youth representation.

The study concludes that there is limited data disaggregated database and one stop shop that provides updated data and statistics for decision making. There is need for establishment and use of integrated research, monitoring and Evaluation system. This system will generate disaggregated data by age to distinguish between youthful and older generation leaders, gender database, identify people with disability, minorities and marginalized and interest groups in society at the time of registration as voters, and as aspirants or candidates.

### 5.3. Recommendations

**This report recommends the following;**

- 5.3.1. Review of Elections act 2011, Political Parties Act 2011, revised 2016, with a view of seeking compliance by amending Regulations and administrative guidelines as regards political party nomination lists in line with Constitutional provisions of Articles 82, 88 and 90. This will enhance the inclusive policy on gender equity and equality in Kenya.
- 5.3.2. Enhanced monitoring, enforcement and compliance. IEBC and RPP need to carry out a deeper scrutiny of party lists, and seek accountability from political parties to comply with the not than two thirds requirement,
- 5.3.3. Kenya needs to sign and ratify the African Youth Charter (AYC) that entered into force on 8<sup>th</sup> August 2009 and signed on June 28<sup>th</sup> 2008, yet no accession or ratification. The need for domestication is alive to Article 2 (5) and @ (6) of the Constitution of Kenya 2010. *There are other Conventions such as The right of Persons with Disability (2006) Indigenous and Tribal Peoples Convention (1989), Convention on the political rights of Women and even Employment Policy Convention 1964 No. 122.*

- 5.3.4.** Lobbying political party leadership, The president and Governors to appoint more women, youth and PWD to positions of decision making, policy formulation (executive) and legislature. These cadres of leadership need to speak boldly about the need to have a formula for Parliament (NA & Senate) women representation.
- 5.3.5.** The appointment of a substantive Registrar of Political Parties and enhance its enforcement mechanisms for both policy, legal and administrative operations.
- 5.3.6.** Parliament and Senate to Legislate an Inclusivity policy and laws on Article 100 of the Constitution of Kenya. This includes reviews and amendments to Elections and Political Parties Acts.
- 5.3.7.** CSO to pursue strategic Litigation with reference to Counties that did not comply with Constitutional provisions as well as Parliament, which has dragged its feet on implementation of Article 100, Constitution of Kenya.
- 5.3.8.** Seek judicial review of the Supreme Court advisory opinion on not more than two thirds gender principle
- 5.3.9.** Review National Youth Policy and National Gender Policy to align with new realities and sensitivities and responsiveness to representation, participation and inclusion of youth, women, PWD and minorities. The Policies need to align with the provisions of the Constitution (2010)

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