



Multi-Sectoral Working Group
on the realisation of the not more than
two thirds gender principle

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**ABRIDGED REPORT OF THE
MULTI - SECTORAL WORKING GROUP
ON THE REALIZATION
OF THE NOT MORE THAN
TWO - THIRDS GENDER PRINCIPLE**

Presented to

HON. AISHA JUMWA K. KATANA
CABINET SECRETARY
GENDER, CULTURE, THE ARTS & HERITAGE

February, 2024
NAIROBI



Multi-Sectoral Working Group
on the realisation of the not more than
two thirds gender principle

February 22, 2024

Hon. Aisha Jumwa K. Katana

Cabinet Secretary

Ministry of Gender, Culture, the Arts and Heritage

Maktaba Kuu Building, Upper Hill

Nairobi

Dear Madam

RE: LETTER OF TRANSMITTAL

The Multi-Sectoral Working Group (MSWG) on the realisation of the **not more than two-thirds gender principle** was established by your office vide Gazette Notices No. 10848 and No. 11090 published on August 15 and August 25, 2023 respectively.

The MSWG was tasked to develop and recommend a framework for the implementation of **the not more than two-thirds gender principle** as captured in Articles 27(6) and (7) as well as 81(b) of the Constitution of Kenya 2010.

The Terms of Reference for the MSWG were as follows;

- i. To review and analyse previous proposals for the implementation of the two-thirds gender principle;
- ii. To conduct comparative studies on best practices in other jurisdictions towards the achievement of gender equality;
- iii. To engage such experts or institutions as may be necessary to achieve the objectives of the Working Group;
- iv. To develop and recommend a framework for the implementation of the **not more than two-thirds gender principle**;
- v. To conduct stakeholder engagement and undertake public participation on the proposed framework for the implementation of the **not more than two-thirds gender principle**;
- vi. To mobilise resources towards the achievement of the objectives of the Working Group; and
- vii. To perform such other function(s) as may be approved by the Cabinet Secretary for the achievement of the objectives of the Working Group.

The Working Group was mandated to complete its work and submit its final report to the Cabinet Secretary within six months from the date of its appointment. The Working Group's term was extended vide Gazette Notice No. 1770 dated February 8, 2024.

In the course of executing its mandate, the MSWG engaged the National Dialogue Committee (NADCO) and submitted preliminary proposals for their consideration since the **not more than two-thirds gender principle** was one of the issues to be addressed. In its final report, NADCO recognised the mandate of the MSWG and recommended the matter for to be addressed comprehensively by the MSWG and submit its report to Parliament for consideration and further action.

As cited in the NADCO report in paragraph 464, which states that 'There was general consensus by the Committee on the need to implement the **not more than two-thirds gender principle** and that the issue should be addressed in collaboration with the Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle.'

Paragraph 518 also states that 'The Committee recommends that (a) The Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle under the Ministry of Public Service, Gender and Affirmative Action to finalise its work, and recommend a framework of implementation of two-thirds gender principle and submit its report to Parliament for consideration.'

The MSWG has since fulfilled its mandate and developed a framework for the implementation of the not more than two thirds gender principle. Further, the MSWG has prepared a report detailing the considerations made in arriving at the proposed framework.

The Working Group is honoured to present this report with the proposed legislative instruments to the Cabinet Secretary, Ministry of Gender, Culture, the Arts and Heritage.

We are thankful for entrusting us with this noble assignment.

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Anne N. Wang'ombe - Chairperson

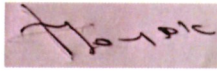
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Daisy Amdany – Co-Chairperson

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Harriet Chiggai, Advisor, Women Rights

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Faith Nziku Kasiva – Member



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Anne Nderitu - Member



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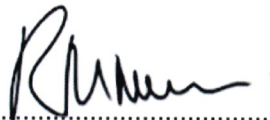
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Mercy Jelimo – Member



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Beatrice Kamau - Member



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Rahab Muiu – Member



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Mitchelle Oyuga - Member



Lucy Mitei - Member



Sarah Muhoya - Member



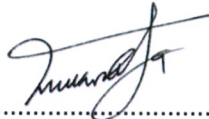
Ruth Makuthu - Member



Beth Michoma - Member



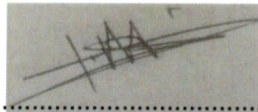
Stelah Chepkemboi Ruttoh - Member



Frankline Mukwanja - Member



Sophia Abdi Noor - Member



Sheikh Ibrahim Lethome Asmani - Member



Al-Haji Hassan Kirua ole Nado - Member



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Kennedy Odhiambo Otina - Member



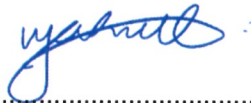
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Salim Vayani - Member



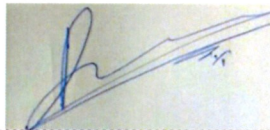
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Ibrahim A. Yakub - Member



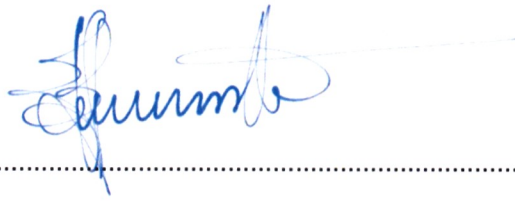
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Jackline N. Makokha - Joint Secretary



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Richard Miano - Joint Secretary



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Eva Mageto - Joint Secretary



Sylvester Mbithi - Joint Secretary

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Christabel Wekesa - Joint Secretary



Rhoda Misiko - Joint Secretary

WORKING GROUP MEMBERS

The table below shows the names of the members and the institutions represented.

Name	Designation	Institution
Anne N. Wang'ombe	Chairperson of the MSWG	Principal Secretary, State Department for Gender, and Affirmative Action
Daisy Amdany	Co-Chairperson	Community Advocacy and Awareness (CRAWN) Trust
Faith Nziku Kasiva	Member	Ministry of Gender, Culture, the Arts and Heritage
Anne Nderitu, CBS	Member	Office of the Registrar of Political Parties
Harriet Chiggai	Member	Advisor, Women Rights
Hon. Dr. Tecla Tum	Member	Executive Office of the President
Angela Wambugu	Member	United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)
Mercy Jelimo	Member	Center for Rights Education and Awareness (CREAW) Kenya
Beatrice Kamau	Member	Women in Leadership and Decision Group Committee of the Gender Sector Working Group
Rahab Muiu	Member	Maendeleo ya Wanawake Organisation
Mitchelle Oyuga	Member	FIDA Kenya
Lucy Mitei	Member	Kenya Private Sector Alliance (KEPSA)
Sarah Muhoya	Member	Echo Network Africa (ENA)
Ruth Makuthu	Member	Independent Electoral and Boundaries Commission (IEBC)
Beth Michoma	Member	Law Society of Kenya
Dr. Stellah Chepkemboi Ruttoh	Member	Former Country Woman Member to the National Assembly candidate
Frankline Mukwanja	Member	Center for Multiparty Democracy - Kenya
Hon. Sophia Abdi Noor	Member	Former Member of Parliament/National Council for Children Services (NCCS)

Sheikh Ibrahim Lethome Asmani	Member	Jamia Mosque
Al-Hajj Hassan Ole Naado	Member	Supreme Council of Kenya Muslims (SUPKEM)
Kennedy Odhiambo Otina	Member	Masculinity Institute
George Kombe Kagohu	Member	Kenya National Association of Social Workers
Salim Vayani	Member	National Muslim Leaders Forum (NAMLEF)
Adams Barasa	Member	Central Organisation of Trade Unions (COTU) – Kenya
Ibrahim A. Yakub	Member	Pastoralist Professionals Association
Jackline N. Makokha	Joint Secretary	State Department for Gender and Affirmative Action
Richard Miano	Joint Secretary	Office of the Prime Cabinet Secretary/State Department for Parliamentary Affairs
Eva Mageto	Joint Secretary	Office of the Attorney General
Sylvester Mbithi	Joint Secretary	National Gender and Equality Commission (NGEC)
Christabel Wekesa	Joint Secretary	Kenya Law Reform Commission
Rhoda Misiko	Joint Secretary	State Department for Gender and Affirmative Action

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FOREWORD

The Multi-Sectoral Working Group (MSWG) on the realisation of the **not more than two-thirds gender principle** was established through Gazette Notices No. 10848 and No. 11090 published on August 15 and August 25, 2023 respectively by the Cabinet Secretary for Gender, Culture the Arts and Heritage, Hon Aisha Jumwa.

The MSWG was mandated to develop a framework to implement the outstanding constitutional requirements on the **not more than two-thirds gender principle** in elective and appointive public institutions. The Working Group comprised of members from State and non-State agencies representing diverse sectors.

The Constitution of Kenya 2010 commits the State to take legislative and other measures, including affirmative action programmes and policies, designed to redress any disadvantage suffered by individuals or groups arising from past discrimination. To effectively implement this constitutional requirement, it is necessary to formulate a comprehensive framework for the implementation of the **not more than two-thirds gender principle**.

The development of the proposed implementation framework was undertaken through a consultative approach that involved participation of a wide range of stakeholders. Further, a rigorous literature review was undertaken and a comparative analysis of gender quotas in other jurisdictions within the African continent conducted.

The MSWG proposes the implementation framework to facilitate the achievement of gender representation in elective and appointive positions. These are categorised into: Legislative proposals, policy interventions and administrative actions to actualise and accelerate the realisation of the **not more than two-thirds gender principle**.

ACKNOWLEDGEMENTS

The Multi-Sectoral Working Group (MSWG) on the realisation of the not more than two-thirds gender principle extends its deepest gratitude to all those who contributed to the successful execution of its mandate.

The MSWG particularly appreciates the Cabinet Secretary for Gender, Culture, the Arts and Heritage, Hon. Aisha Jumwa Katana, whose foresight and commitment to the promotion of gender equality and inclusion paved the way for the establishment of the Working Group. Her trust and support were instrumental in guiding the Group's endeavours.

Our special thanks go to the UN Women Kenya Country Office and Development Partners for their extensive support to the MSWG process. Notable appreciation goes to other partners that supported the process financially, including the Centre for Rights Education and Awareness (CREAW), ECHO Network Africa, Community Advocacy and Awareness Trust (CRAWN), the Federation of Women Lawyers in Kenya (FIDA Kenya), Maendeleo ya Wanawake Organisation (MYWO), the Electoral Law and Governance Institute for Africa (ELGIA) and the Centre for Multiparty Democracy (CMD).

The MSWG further appreciates the valuable technical support from Ms. Winfred Lichuma, the Lead Technical Consultant, Mr. Bjarte Tora of Oslo Centre, Mr. Peter Musyimi, HSC (KLRC), Mr. Mbugua Ng'ang'a and Ms. Saskia Brechnemacher of Carnegie Endowment for International Peace for their contribution.

We also extend our sincere thanks to the institutions and citizens who actively participated in stakeholder engagements and public forums. Their diverse perspectives, constructive feedback and impassioned advocacy were pivotal in shaping the outcomes of this report.

Finally, we acknowledge with deep appreciation the dedication and commitment of the Members and the Secretariat of the Multi-Sectoral Working Group under the able leadership of the Chairperson and Co-Chairperson whose tireless efforts brought this report to fruition.

Special recognition to everyone who continues to play a pivotal role in advancing gender equity, equality, constitutionalism, and the rule of rule.

Chairperson

Co-Chairperson

ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
BETA	Bottom-Up Economic Transformation Agenda
CAJ	Commission of Administrative Justice
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CGSWG	County Gender Sector Working Group
COK	Constitution of Kenya
CSOs	Civil Society Organisations
FBO	Faith Based Organisations
FPTP	First-Past the-Post
GBV	Gender-Based Violence
GEWE	Gender Equality and Women Empowerment
GOK	Government of Kenya
GRB	Gender Responsive Budgeting
IEBC	Independent Electoral and Boundaries Commission
KNBS	Kenya National Bureau of Statistics
MCA	Member of County Assembly
MP	Member of Parliament
MSWG	Multi Sectoral Working Group
MTP IV	Medium Term Plan IV
NADCO	National Dialogue Committee
NGEC	National Government Equality Commission
NGO	Non-Governmental Organisation
PR	Proportional Representation
PWD	Person with Disability
SDG5	Sustainable Development Goal 5
SGBV	Sexual and Gender-Based Violence
UN	United Nations
SDGAA	State Department for Gender and Affirmative Action
TORs	Terms of Reference
TWG	Technical Working Group

CHAPTER ONE

INTRODUCTION

The promulgation of the Constitution of Kenya (2010) ushered in a new dispensation for implementation of the **not more than two thirds gender principle** in elective and appointive positions.

Article 10 of the Constitution promotes national values and principles of governance that include equality and non-discrimination, inclusiveness, respect for human rights, equity, and protection of the marginalised and minorities. Gender equality is promoted in various Articles of the Constitution, and it is well stipulated in Chapter Four on the Bill of Rights, which anchors human rights as an integral part of Kenya's democratic State. It is the framework for social, economic, and cultural policies.

Article 27 promotes equal rights for men and women in public and private spheres. Further, the Constitution promotes fundamental freedoms for men and women, preserves their dignity and promotes the right to equal opportunities in political, economic, cultural, and social spheres.

The "**not more than two-thirds gender principle**" — hereinafter referred to as "**the gender principle**" — in the Constitution of Kenya is designed to ensure that neither gender occupies more than two-thirds of seats in elective or appointive positions in public institutions. The rationale behind this principle is to advance gender equality and address historical imbalances in representation. It is also the promotion of the rights of the most vulnerable and marginalised and recognition of women's rights as human rights.

By limiting the dominance of any single gender in decision-making bodies, the principle aims to create a more inclusive and diverse governance structure that reflects the composition of the population. This helps to ensure that the perspectives, experiences and interests of both men and women are considered in the formulation and implementation of laws and policies.

Additionally, promoting gender balance in leadership positions is crucial for achieving sustainable development and social progress. It enables both women and men to contribute their talents, skills and insights to address pressing issues, such as poverty alleviation, political participation, healthcare, education and environmental sustainability.

Overall, the *not more than two-thirds gender principle* is an important step towards advancing gender equality and building a more inclusive society where all individuals have an equal opportunity to participate and thrive.

ESTABLISHMENT OF MSWG

The Multi-Sectoral Working Group (MSWG) on the not more than two-thirds gender principle was established by the Cabinet Secretary for Gender, Culture, the Arts, and Heritage, the Hon Aisha Jumwa, *vide Gazette Notices No. 10848 dated August 15, 2023 and No. 11090 dated August 25, 2023* to develop and recommend a framework for the implementation of the not more than two-thirds gender principle as captured in Articles 27(6) and (7) and 81(b) of the Constitution of Kenya 2010. In addition, the MSWG was tasked with conducting stakeholder engagements, reviewing, and analysing earlier proposals for the implementation of the Gender Principle and soliciting public input on the suggested framework.

Its terms of Reference are outline in the main report.

METHODOLOGY

The MSWG used several approaches and strategies to execute its mandate. This included: Desk literature review, call for and receipt of memoranda, stakeholder engagement, public participation, engagements with technical experts, creation of sub-communities, analysis of submissions, report writing and development of periodic briefs to the Cabinet Secretary.

OPERATIONALISATION OF THE MSWG

To effectively discharge its function and mandate, the MSWG established sub-committees. Each sub-committee had a chairperson and was allocated specific TORs as described below.

These were; Strategy and Planning; Legal; Resource Mobilisation, Advocacy, Lobbying and Civic Education and Communication.

LIMITATIONS

During the period of public participation, some parts of the country were experiencing heavy rains, leading to flooding. The team took a proactive approach in compliance with the disaster risk management policy 2017, to ensure safety of the team members and participants in the affected regions. The Manderu forum was moved to Isiolo while the Kilifi one was moved from Kilifi town and to Malindi.

Despite the challenges and last-minute postponements and changes of venue for some public fora, public participation proceeded well without any exposure to danger or risk due to adverse climate conditions.

CHAPTER TWO

THE JOURNEY TOWARDS FINDING A FORMULA OF IMPLEMENTING THE NOT MORE THAN TWO-THIRDS GENDER PRINCIPLE

INTRODUCTION

The Not More than Two-Thirds Gender Principle has historically remained an elusive agenda in Kenya, having failed on many occasions in Parliament, and this has frustrated efforts to find a legal framework either through constitutional amendments or legislative proposals. The failure is attributable to various factors, including social, economic and political dynamics that have over time since the promulgation of the Constitution of Kenya 2010, impeded the realisation of a formula to give effect to the constitutional provision under Articles 27(6) and (8) as well as 81 (b).

This chapter outlines the historical context, including the many attempts made by various stakeholders to realise the constitutional imperative on the not more than two-thirds gender principle. It concludes with a fresh commitment by the current Government, through the memo by H.E. President Dr. William Ruto to Parliament dated December 9, 2022, to consider new proposals towards realisation of the Gender Principle in Parliament.

THE JOURNEY SO FAR

Since 2011, various Bills have been proposed for adoption in Parliament as part of the journey to realising the Gender Principle. The following section looks at what each of these Bills provided for and the specific reasons why each failed.

The Bills

Since 2011, there have been twelve attempts at legislating on the not more than two-thirds gender principle, with most Bills seeking to entrench the principle in the Constitution. The Samuel Chepkong'a Bill sought to make the principle progressive while the Joe Mutambu Bill sought to scrap the principle altogether. The other Bills were;

i) Constitution of Kenya (Amendment) Bill, 2011

The Constitution of Kenya (Amendment) Bill 2011 was introduced to the National Assembly by the Hon. Mutula Kilonzo (now deceased). This Bill was introduced before the first elections under the newly promulgated Constitution.

It proposed to amend Articles 97 and 98 of the Constitution by lifting the provisions of Article 177(1)(b) to give full effect to Articles 27(8) and 81(b), which would have offered a lasting solution on the issue of gender parity in elective positions, more specifically in the National Assembly and Senate.

ii) *The Constitution of Kenya (Amendment) Bill, 2014 (Joe Mutambu Bill)*

This Bill sought to delete Article 81(b), which provides that the electoral system shall comply with the requirement that not more than two-thirds of the members of elective public bodies shall be of the same gender.

It also sought to reduce the number of constituencies from 290 to 140, do away with the 47 elected county woman representatives in the National Assembly, reduce the number of counties from 47 to 10, do away with the 16 nominative seats reserved for women in the Senate and instead, elect 20 senators, a man and a woman, from each of the proposed 10 counties, thus achieving gender parity in the Senate. It further proposed to remove reserved seats for youth and persons with disabilities in the Senate and introduce two new seats for minority communities. Finally, it sought to reduce the number of members of constitutional commissions from a maximum of nine to three.

The Bill was motivated by the public service wage bill debate. It was withdrawn before it could be debated by the National Assembly.

iii) *Constitution of Kenya (Amendment) Bill, 2015 and the Two-Third Gender Rule Laws (Amendment) Bill, 2015*

These Bills were introduced simultaneously in the National Assembly on April 30, 2015 by Hon. Samuel Chepkong'a. The Constitution of Kenya (Amendment) Bill, 2015 simply provided for amendment to Article 81(b) by inserting the words "*progressive implementation of legislation to ensure that.*"

The amended Article 81(b) would thus have read as follows: "*The electoral system shall comply with the principle of progressive implementation of legislation to ensure that not more than two-thirds of members of elective public bodies shall be of the same gender.*"

The Two-Third Gender Rule Laws (Amendment) Bill, 2015 was intended to amend the National Gender and Equality Commission Act, 2011; the Political Parties Act, 2011; the Elections Act, 2011; the Independent Boundaries and Electoral Commission Act, 2011 and the County Governments Act, 2012 by introducing various provisions seeking to promote representation, in Parliament, of special interest groups including women, persons with disabilities, youth, ethnic and other minorities and marginalised communities as envisaged in Article 100 of the Constitution.

The two Bills were not debated in the National Assembly and eventually lapsed upon the expiry of the 11th Parliament.

iv) Constitution of Kenya (Amendment) (No.4) Bill, 2015

Popularly known as **Duale I**, this Bill was published on July 24, 2015 by then Leader of the Majority, Hon. Aden Duale. It was introduced in Parliament following the 2012 Supreme Court Advisory Opinion, which required Parliament to enact legislation for the implementation of the Gender Principle by August 27, 2015. In terms of events that led up to this Bill, the history goes back to 2012, when the then Hon. Attorney General, Prof. Githu Muigai, moved the Supreme Court to render an Advisory Opinion as to whether Parliament should enact legislation giving effect to the Gender Principle before the first elections under the new Constitution, which were scheduled for March 2013.

The Supreme Court opined that the Gender Principle should be achieved progressively, hence Parliament did not have an obligation to enact the law giving effect to the Gender Principle before the 2013 General Elections. However, a deadline of August 27, 2015 was given. Pursuant to Article 261(2), the National Assembly on July 29, 2015 resolved to extend the deadline set by the Supreme Court by one more year to August 27, 2016.

The Duale I Bill proposed the lifting of the provisions of Article 177(1)(b) into Articles 97 and 98 and that a beneficiary of a special nominative seat would only be entitled to a maximum of two terms. It also provided that the affirmative action provisions creating the special seats in the National Assembly, Senate and County Assemblies would lapse 20 years after the first elections following enactment of the Bill.

This Bill was not passed after Parliament failed to raise the two-thirds majority required to pass the proposed constitutional amendment as provided for in Article 256(1) (d).

v) Constitution of Kenya (Amendment) Bill, 2015 (Judith Sijeny Bill)

The Bill was introduced in the Senate on August 21, 2015 by Hon. Senator Judith Sijeny, as a private member's Bill. The main variation between the Bill and the Duale I Bill was that the Sijeny Bill provided that Parliament would review the provisions on special seats after 20 years to determine whether the Gender Principle could be achieved without the special seats. The second variation was that the Sijeny Bill did not propose to amend Article 177 on County Assemblies. The Bill failed due to lack of the required quorum to vote on it.

vi) The Constitution of Kenya (Amendment) (No. 6) Bill, 2015 (Aden Duale II Bill)

Popularly known as the 'Compromise Bill', the Bill contained 'minor' variations from the Duale I on the affirmative action clause lifted from Article 177(1)(b). For the National Assembly, the revised clause read as follows;

"(ca) the number of special seat members necessary to ensure that no more than two-thirds of the members elected under clause (1)(a) are of the same gender;"

For the Senate, the revised clause read thus;

(da) the number of special seat members necessary to ensure that no more than two-thirds of the members elected under clause (1)(a) are of the same gender;"

Despite publication, the Bill was not debated and, therefore, lapsed with the expiry of the 11th Parliament.

vii) *The Constitution of Kenya (Amendment) Bill, 2018 (Aden Duale Bill)*

This Bill was introduced to the National Assembly on February 12, 2018 by Hon. Aden Duale and had similar provisions with the Duale II Bill published on December 2, 2015.

Despite publication, the Bill was not debated and, therefore, lapsed with the expiry of the 12th Parliament.

viii) *Constitution of Kenya (Amendment) Bill, 2019 (Gladys Boss Shollei Bill)*

This Bill was introduced to the National Assembly on July 4, 2019 by Hon. Gladys Boss Shollei. It proposed to achieve the not more than two thirds gender principle in elective and appointive bodies as well ensure the membership of Parliament reflects the requirement of Article 54(2) of the Constitution that at least five per cent of the members in elective and appointive bodies be persons with disabilities.

Regarding the National Assembly, the Bill sought to amend Article 97 to increase the number of elected women members of the National Assembly from 47 to 136. This would be achieved by designating two adjacent constituencies in each county and three adjacent constituencies with the least number of constituencies in counties with odd number of constituencies. It further sought to delete Article 97(1)(c) and replace it with a provision for nomination of 22 persons with disabilities.

In the County Assemblies, the Bill sought to limit the number of representative wards to 1,450 and provide for the election of one woman for at least every two wards in a county for purposes of gender parity and to remove the provision for post-election gender top-up seats.

Despite publication, the Bill was not debated and lapsed with the expiry of the 12th Parliament.

ix) *The Constitution of Kenya (Amendment) Bill, 2019 (Farhiya Ali Haji & Mutula Kilonzo Junior Bill)*

This Bill, co-published by Hon Senators Farhiya Ali Haji and Mutula Kilonzo Junior sought to amend the Constitution to give effect to the two-thirds gender principle through the lifting of provisions of Article 177(1)(b) into Articles 97 and 98. It also sought to amend Article 81 by inserting a new clause that the State takes legislative, policy and other measures including the setting of standards to achieve the realization of the principle.

The Bill was not debated in the Senate and lapsed with the expiry of the 12th Parliament.

x) *The Constitution of Kenya (Amendment) Bill, 2020 (The Building Bridges Initiative Bill)*

The Building Bridges Initiative Bill (BBI Bill) was published by the promoters of the Building Bridges Initiative on November 25, 2020. Regarding the two thirds gender principle, the Bill provided the following;

- a) Amendment to Article 82 of the Constitution, mandating Parliament to enact legislation which imposes sanctions on a political party that fails to ensure that its list of nominated candidates complies with the Gender Principle.
- b) Amendment to Article 88 to mandate IEBC to ensure that not more than Two Third of the members of a political party are of the same gender.
- c) Amendment to Article 89 to increase the number of constituencies from 290 to 366 with aim of promoting equitable representation in the National Assembly and, in tandem, Article 97 was to be amended to increase the number of elected members of the National Assembly from 290 to 366. The amendment to Article 97 also provided for special top-up seats necessary to ensure that the Gender Principle is actualised. Further, the Bill provided that in filling the special top-up seats, first priority in the nomination shall be given to candidates who contested for the constituency seats but were not elected. The provision on top-up seats was capped at 15 years.
- d) Amendment to Article 98 so that Senate would comprise of 94 members, with each county represented by a man and a woman elected by the voters. This would have meant that each county would have two senators; a man and a woman, and the gender composition would, therefore, be 50:50.
- e) Amendment to Article 90 on allocation of party list seats to align it with the amendments under Articles 97 and 98. The amendment proposed that nomination seats in the National and County Assemblies be allocated on the basis of the total

votes received as opposed to allocation based on the total number of seats won by a political party.

Although the BBI Bill had been passed by a Majority of the Counties, National Assembly and the Senate, it was challenged in the courts — from the High Court to the Supreme Court — and found to be unconstitutional for a number of reasons including that the President could not initiate constitutional amendments/changes through a popular initiative under Article 257. Judges also cited lack of public participation on the Second Schedule of the Bill that provided for 70 additional constituencies.

xi) The Constitution of Kenya (Amendment) Bill, 2023 (Beth Syengo Bill)

This Bill, published by Hon Senator Beth Syengo, on March 29, 2023, was a replica of the Hon Senators Farhiya Ali Haji and Mutula Kilonzo Junior Bill, 2019, except that it provided that a person was only eligible to be nominated once to the National Assembly, Senate and County Assemblies. The Bill is yet to be tabled for debate before the Senate and its mover agreed to await the outcome of the MSWG proposal.

Several Court Decisions have been reached on the subject matter since the promulgation of the Constitution 2010. These are examined in detail in the full report.

THE RENEWED COMMITMENT TO THE GENDER PRINCIPLE

The Kenya Kwanza Manifesto

The Kenya Kwanza Manifesto, also known as 'The Plan' noted that women remain largely excluded from participation and decision-making in governance and political institutions. To address this, the manifesto committed to ensuring the *realization of the two-thirds gender rule in elective and appointive positions in the public sector within 12 months* following election and ensuring that 50 per cent of Cabinet positions are held by women.

The Women Charter

The Kenya Kwanza Alliance further formalised its promise to the women's agenda through the Women's Charter by committing to addressing and championing women and girl rights. Notably, the charter affirmed Kenya Kwanza's commitment to the implementation of the not more than two thirds gender rule within the first three months of the administration and reserve half of its Cabinet positions for women.

The Presidential Memorandum to Parliament

In a memorandum dated December 9, 2022, addressed to the Speakers of Parliament, H.E. President Dr. William Ruto sought Parliament's consideration in addressing several issues, among them the enactment of a framework for implementing the Gender Principle.

A summary of what the President's Memo to Parliament entailed is to be found in the main report.

The Establishment of the MSWG

The Cabinet Secretary for Ministry of Gender, Culture, the Arts and Heritage, Hon. Aisha Jumwa Katana on June 15, 2023 inaugurated the Multi-Sectoral Working Group (MSWG), which was tasked with the role of developing an enabling framework for the implementation of the not more than two thirds gender principle. This was followed by gazettelement of the MSWG through the *Kenya Gazette* published on August 15, 2023, for a period of six months and further, an extension for another six months vide Gazette No. 1770 dated February 8, 2024.

The formation of the MSWG preceded the formation of the National Dialogue Committee (NADCO), part of whose mandate was to recommend changes to the Constitution, including one to entrench the Gender Principle.

The tabling of the NADCO report in the National Assembly for debate in February 2024 necessitated the submission of the MSWG report so that the two could be debated in tandem.

CHAPTER THREE

COMPARATIVE JURISDICTIONS IN AFRICA

This chapter presents a comparative analysis of select jurisdictions in Africa to provide evidence-based insights and best practices on gender quotas mechanisms to promote equity in political and electoral processes. In majority of the case studies, African countries have adopted a first-past-the-post (FPTP) electoral system. Kenya has a Mixed Member Proportional Representation system.

Gender quotas have been adopted by countries globally to fast-track inclusion of women in political representation and decision making. Gender quotas break the cycle of male dominance in politics and address underlying biases and norms, thus giving women a fair chance to be visible and participate in public life.

i. Summary of the findings from the analysis

Eleven Sub-Saharan African countries were studied for best practices.

The select countries have used constitutional, legislative and/or voluntary quotas to increase the number of women in Parliament. Uganda and the United Republic of Tanzania, which have similar electoral systems as Kenya, have used constitutional provisions to reserve 30 per cent of seats for women. Tanzania, for instance, has reserved 118 seats for women, while Uganda has 112.

Rwanda, which is leading globally at 61.3 per cent of women in Parliament, combines both constitutional gender quotas with reserved seats. It has the Proportionate Representation (PR) administered in a one-party government system as opposed to Kenya's first-past-the-post system in a multi-party political environment.

Some countries apply sanctions as enforceable mechanisms to guarantee more women seats in Parliament. In Rwanda, the Senate holds accountable a political organisation that violates obligations under Article 10, which is the constitutional provisions reserving mandatory 30 per cent of seats in decision-making bodies to women.

Learning Points for Kenya from the analysis

Electoral gender quotas are the most effective measures to include women in politics as seen from the approaches various countries have used. The Kenya Constitution 2010 provides for constitutional gender quotas in terms of reserved seats (National Assembly and Senate and County Assemblies) and nominations for special categories through nominations for all levels including county governments.

The **not more than two thirds** gender principle is provided for in Article 27(6) and (8) as well as 81(b) of the Constitution. There is clarity in its implementation for county assemblies in terms of Article 177(1) (b) and (c). However, there is no implementation clarity provisions of Articles 97 and 98. Parliament is yet to enact the law envisaged under Article 100.

The search for the implementation of the **not more than two thirds** gender principle has remained elusive since promulgation of the Constitution in 2010. As evidenced by the analysis, there is a *lucuna* in the Constitution, specifically in Articles 97 and 97 that needs to be cured by a constitutional amendment.

Use of voluntary quotas for political parties has failed in Kenya because majority of political parties do not present female candidates especially in their strongholds.

Conclusion

The comparative analysis study demonstrates that countries with the First-Past-the-Post (FPTP) electoral system (Uganda and Tanzania) have achieved gender parity in representation through gender quotas in the constitution, enabling legislations, policy and administrative measures. Other additional measures, such as sanctions, have been used in enforcement and implementation tools to achieve gender quotas. Kenya must follow suit and get its constitutional gender quotas clear and support it with strengthening the Political Parties Act and the Election Act.

As a long-term measure, Kenya may consider adopting a pure Proportional Representation (PR) system. Its benefits would include the following:

- It is significantly much cheaper both for political parties and IEBC.
- It would involve less logistics for the political parties and IEBC.
- There will be no more of the current six party lists, depending on the design of the PR system.
- Most likely, there will be no need for boundary reviews. This will also avoid politics related to such review.
- Gender requirements will be achieved.
- Much higher likelihood to achieve the inclusion of SIGs.
- No major increase in the number of MPs. Number of members in county assemblies can be reduced as well.
- The winner takes it all mentality can change.
- All members elected will be equal.
- People will vote for parties and not for single individual candidates.
- It will be much easier for IEBC, ORPP and any other observers to monitor political party nominations and party lists.
- The PR system is much easier to understand as required in the Kenyan Constitution.

- It will reduce the cost of election for individual candidates (and the need to recover election costs once candidates are elected and financial losses for candidates not elected).
- There will be fewer disputes arising from allocation of seats from the party lists.

CHAPTER FOUR

PUBLIC PARTICIPATION

INTRODUCTION

This chapter presents analyses, findings and recommendations of public participation process undertaken by the MSWG. The public participation was conducted in compliance with provisions of Article 10 of the Constitution, which provides for national values and principles of governance that include patriotism, national unity, rule of law, democracy and participation of the people.

The MSWG initiated the public participation process through a call for written memoranda and oral submissions from stakeholders and a call for the public to participate. This was done by publishing public announcements in daily newspapers with nationwide circulation on October 9, 2023. The stakeholder engagement forums were held between November 14 and 17, 2023 at the Kenya National Library Service (Maktaba Kuu Building) in Nairobi. Written submissions were received by the secretariat throughout the period of public participation.

Stakeholders who presented their memoranda to the MSWG included representatives from diverse sectors; academia, women rights organisations, private sector, professional groups, civil societies organisations, political groups, organisations of/for persons of disabilities, religious organisations, trade unions, media and government institutions among others. These public engagements received wide coverage from national, community and social media.

The MSWG, through publications in the print media, radio talks, calls and online platforms, invited the public to give views on the implementation of the Gender Principle. The public participation was scheduled to run in various regions concurrently. Through the publication in the print media, the public was also given the opportunity to submit views through a designated email address – mSWG@gender.go.ke or by delivering written submissions to the secretariat hosted at the State Department for Gender and Affirmative Action.

The clustered regions visited were: Kajiado, Uasin Gishu, Embu, Garissa, Isiolo, Kilifi, Machakos, Nakuru, Kakamega, Kisumu and Nyeri. Participants were invited from neighboring counties. The attendees included women leaders, men, persons with disabilities, government officers and representatives of marginalised groups among others. Written submissions were also received.

These fora served as crucial platforms for the public to articulate their perspectives on gender parity in the political leadership of the country, with representation from the youth, PWDs and marginalised communities.

Stakeholders presented three broad proposals *touching on constitutional amendments and amendments or enactment of legislative framework*

Legal changes proposed included;

- i) Amending the Constitution
- ii) Modifying electoral laws and other relevant statutes
- iii) Amending party regulations to enforce compliance with the Gender Principle.

The proposed constitutional amendments are outlined below.

1. Constitutional Amendments

Lifting Article 177 (1) (b) and (c)

Proposals were received calling for amendments to the Constitution of Kenya 2020, particularly Articles 97 and 98 to include provisions similar to Article 177 (1) (b) and (c).

The purpose of such amendment is to anchor the Gender Principle within the constitutional framework, making it a fundamental and binding aspect of the country's governance. Consequential amendments to related constitutional articles, such as Article 90, were also proposed to ensure consistency.

2. Modifying Electoral Laws

Stakeholders also gave detailed proposals on the need to change the electoral system to align it with the Gender Principle. Specific changes proposed include;

- Amendments to Article 82 of the Constitution
- Introducing gender electoral units and
- Modifying the nomination process to ensure gender balance.

The goal is to eliminate barriers within the electoral system that hinder the realisation of the Gender Principle. Proposal to consider shifting from the first-past-the-post (FPTP) to Proportional Representation (PR).

The specific recommendations are examined in detailed in the main report.

In addition, there were proposals on the following

The Opposite Gender-Running Mates: For Governor and President elections. This proposal seeks to address gender imbalance in Executive leadership positions by mandating that running mates be of the opposite gender, fostering a more equitable distribution of power.

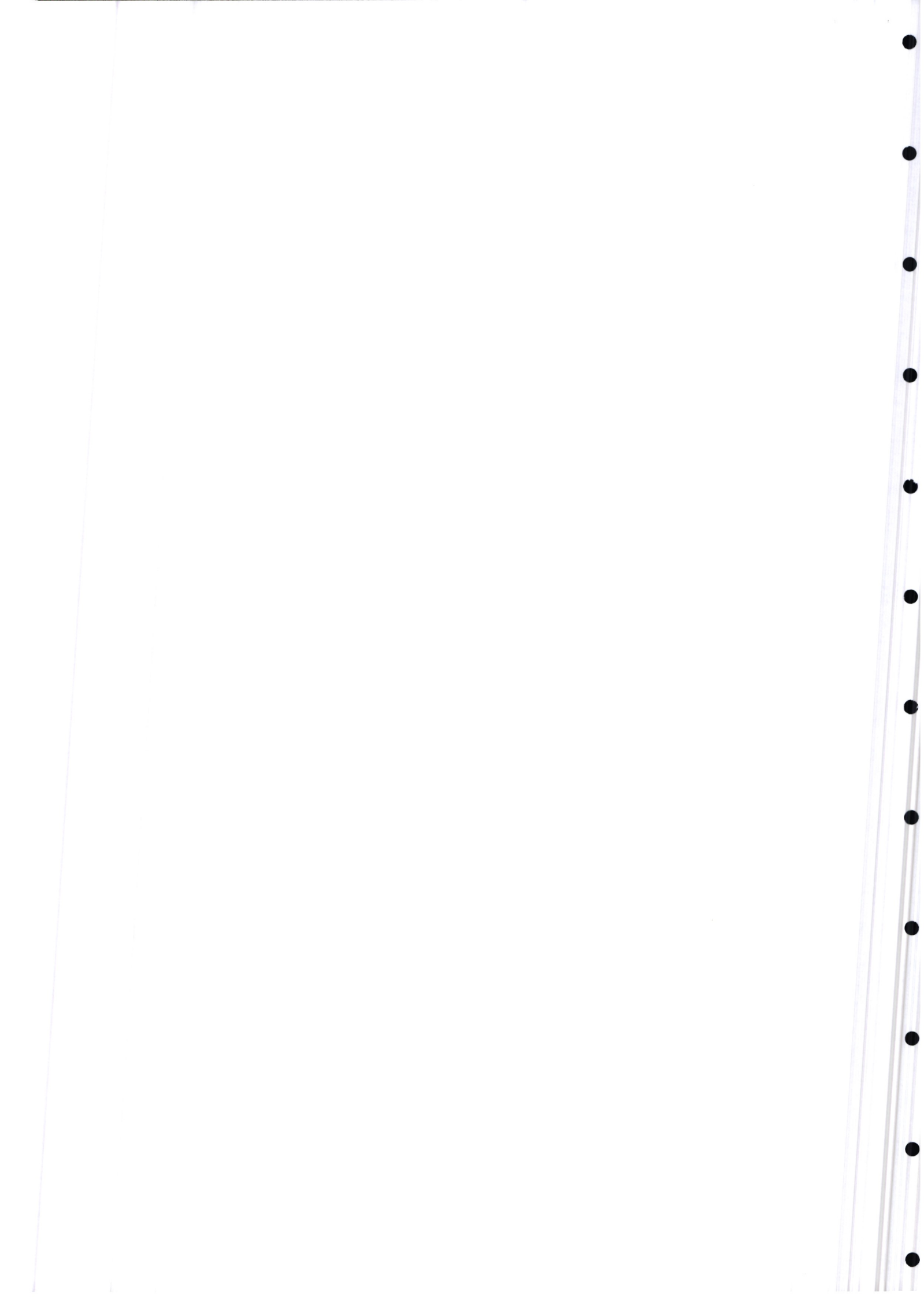
Making the Senate an equal house: Suggestions were made to make the Senate and equal House to the National Assembly by amending Article 98 of the Constitution to allow every county to elect one man and one woman and doing away with the current nomination seats reserved for women and PWDs.

Reducing Constituencies: Some participants advocated for the legislative reduction of the number of constituencies. The intention of this proposal is to streamline the electoral landscape, making it more manageable while concurrently fostering gender equality in representation.

Gender Quota Systems/Temporary Special Measures and Leadership Pathways to Achieve Affirmative Action

Participants presented seven proposals on how to achieve the Gender Principle through legislation. These are;

- i) **Introduction of Gender Quotas/TSMs):** Participants recommended legislative interventions to introduce gender quotas in the political system.
- ii) **Hard Sanctions for Non-Compliance:** Since an electoral gender quota is the most effective measure to address the unequal representation of women's numerical numbers in political decision-making spaces, the call was to introduce stiffer sanctions against political parties that fail to comply.
- iii) **Political Party Regulations:** Participants called for amendments to the Political Parties Act to introduce stringent regulations ensuring compliance with the Gender Principle within political parties.
- iv) **Eliminating Obstacles:** Calls were made for legislative measures aimed at eliminating structural and legal obstacles that impede fair representation for women.
- v) **Reviewing tokenistic nature of representation at the County Assemblies level is a key concern:** The current use of party lists has witnessed its abuse by political parties. The women nominated owe allegiance to their nominating political parties. This concern indicated the need to go beyond mere numbers and empower women to engage in meaningful competitive constituency-based elections to avoid tokenism and do away with patronage.
- vi) **Rotational System:** Participants emphasised a legislative proposal that focused on introducing a rotational system for constituencies to facilitate



the realisation of the Gender Principle in the National Assembly and Senate.

vii) Legislating an active participatory process for affirmative action in nominating women candidates. This may involve an administrative process of introducing specific legislation that mandates political parties to follow affirmative action measures in their nomination processes.

3. Proposals on how to make political parties implement internal mechanisms and comply with laws and regulations aimed at realising the Gender Principle are discussed in detail in the main report.

Establishing the most viable proposal from the Public Engagement

Findings from the public hearings highlight a collective concern for the effective implementation of the Gender Principle in Kenya's political landscape. The diverse proposals emphasise legislative, policy and administrative measures aimed at overcoming existing challenges, such as the patriarchal mindset, electoral system inadequacies and lack of political will. The proposals advocate for comprehensive legal reforms, electoral system reviews, affirmative action in nominations and the establishment of specific administrative structures to monitor and evaluate gender representation. Additionally, the importance of collaboration with civil society organisations, stakeholders and targeted support for marginalised communities, particularly indigenous women, emerges as pivotal for achieving meaningful gender equity in political decision-making.

These proposals collectively advocate for a holistic strategy involving legal reforms, policy implementation, awareness campaigns and collaborative efforts to ensure the realisation of the Gender Principle.

Below is a summary of some of the proposals.

a) Gender Top-Up Mechanism

Lift Article 177 (1) (b) and write it into Article 97 and 98 as a gender top-up mechanism to ensure compliance with the constitutional threshold on the Gender Principle. This will borrow from the county assemblies' model.

b) Avoidance of Referendum and Sunset Clauses

Drawing from the proposals, participants cautioned against having a sunset clause. Further, they emphasised implementing the gender parity measures through legislative means without resorting to a referendum. Legislative amendments under Article 256 were proposed to expedite the process and avoid potential delays.

c) Electoral System Reforms

Participants proposed changes to the electoral system, including adopting Proportional Representation systems as a means enforcing the two-thirds gender rule through nomination processes.

d) Gender Representation in Appointive Seats

It is apparent that the gender principle has not been realised in appointive seats as well despite the constitutional provision. Political goodwill by the Executive is required to implement the Constitution fully.

e) The Opposite Gender Rule

While the proposal is noble, is important to consider minimal amendments to the Constitution. The challenge has been the fewer numbers of women elected on constituency-based seats. In the immediate, it may be necessary to limit the amendments to Articles 97 and 98 only. This proposal could be considered as a long-term solution.

f) Proposal to Designate NGEK or women's rights organisations to oversee the gender nomination/elections

The proposal goes against the principle of Kenya's democracy as provided for by the Constitution. In accordance with Article 90, the nomination and drawing of special seats party lists is the preserve of political parties.

This proposal is, therefore, not viable.

g) Legal Framework on Gender Equality:

The call for a robust legal framework to enforce gender parity is a welcome move. The SDGAA, together with the Hon Attorney General's office, to consider proposing a gender equality law in the long term.

h) Proposal on Gender and Diversity Law

The law to activate Article 100 of the Constitution has not been enacted. Parliament as currently constituted is, therefore, unconstitutional. Parliament must be held to account for failure to enact the requisite legislation. By extension, this includes the legal framework on the Gender Principle. The leader of the majority should be notified to immediately commence the process of enacting the law.

Other proposed administrative measures are examined in detail in the main report.

CHAPTER FIVE

FRAMEWORK FOR THE IMPLEMENTATION OF THE NOT MORE THAN TWO-THIRDS GENDER PRINCIPLE

PROPOSALS RECEIVED BY MSWG

The findings from the engagements with experts and the public present a collective concern for the effective implementation of the **not more than two-thirds gender principle** in Kenya's political landscape. The diverse proposals emphasise **legislative, policy and administrative measures** aimed at overcoming existing challenges, such as the patriarchal mindset, electoral system inadequacies and the lack of political will.

The proposals advocate for comprehensive legal reforms, electoral system reviews, affirmative action in nominations and the establishment of specific administrative structures to monitor and evaluate gender representation.

Find in here below a summary of some of the proposals:

1. Review of legal Framework/Constitutional Amendments:

Proposals called for amendments to the Constitution of Kenya 2010, particularly articles 97 and 98 to include provisions similar to Article 177 (1) (b) and (c). The purpose is to anchor the **not more than two-thirds gender principle** within the constitutional framework, making it a fundamental and binding aspect of the country's governance. Consequential amendments to related constitutional articles, such as Article 90, may be proposed to ensure consistency with the political party lists.

2. Electoral System and Political Parties and Sanctions

Proposals advocated for a comprehensive review of the electoral system to align it with the Gender Principle.

Among the specific changes proposed include amendments to Article 82 of the Constitution, introducing gender electoral units and modifying the nomination process to ensure gender balance. The goal is to eliminate barriers within the electoral system that hinder the realisation of the gender principle.

3. Nomination and Affirmative Action

Proposals focused on legislating an active participatory process for nominating women candidates. This, the stakeholders, suggested could include introducing

amendments to the Political Parties Act to ensure candidates' party lists comply with the Gender Principle.

4. Sunset Clause:

Discussions on the absence of a sunset clause suggested considering legislative provisions that determine the temporal scope of the proposed changes. Some stakeholders considered that a sunset clause, if introduced, would specify whether the gender principal implementation measures are time-bound or continue indefinitely until gender balance is achieved. However, the majority were opposed to introducing a sunset clause. The compromising view was that that the law should consider putting a cap to term limits for beneficiaries of affirmative action to not more than two terms.

5. Administrative Processes

That there is consideration to have a gender related fund within the political party's fund or have the same provided for separately under the Political Parties Act to enable promotion of gender-related activities.

6. Appointive Seats Gender Considerations:

Proposals made included consideration for incorporating gender balance in appointive seats. This could entail amendments to laws regulating appointments in various sectors, ensuring that the principle extends beyond elective positions.

A further proposal made was to have legislation providing for 50:50 gender balance ratios in appointive positions. That the Gender Principle be implemented in all sectors, not just elective seats.

PREVIOUS PROPOSALS AS RECEIVED AND PROPOSED BY TWG

Since the promulgation of the Constitution in 2010, there have been various efforts aimed at establishing legal, policy and administrative frameworks for the implementation of the Gender Principle as envisaged under Article 27(8) and 81(b). However, none of these efforts have borne fruit. These proposals included:

- i. Gender Top-up Through Party Lists
- ii. Doubling the County Woman Member to the National Assembly seats
- iii. Tripling the County Woman Member to the National Assembly seats
- iv. Proportionate increase of the County Woman Member to the National Assembly seats
- v. Gender quota for party strongholds

- vi. Rotational seats for affirmative action
- vii. Best runner-up
- viii. Reconfiguration of constituencies
- ix. Voting for a party ticket (twinning)
- x. Gender incentives.

A detailed analysis of the proposals received over the last six months by the MSWG and those received under various initiatives in the past — including their merits and demerits — is to be found in the comprehensive report.

OTHER EMERGING PROPOSALS

The MSWG received a myriad of proposals on how to achieve the Gender Principle. Whilst some of the views proposed were not new, others were novel as summarised herein below;

- a) That Political Parties be required to submit compliant party lists to the Independent Electoral and Boundaries Commission's (IEBC), failing which IEBC's mandate to review the said lists from political parties be expanded to not only reject in totality non-compliant list(s), but also issue sanctions to non-compliant political parties.
- b) That there be a legislative provision of 50:50 ratios in appointive positions and provide legislative mechanisms to stipulate opposite gender variations for presidential and gubernatorial running mates.
- c) That the Gender Principle be implemented in all sectors, not just elective seats.
- d) That employment to consider a balance between men and women while considering special interest groups.
- e) Integrating the Gender Principle in the education curriculum to promote equity from the formative years which will enhance the comprehension of gender parity issues.
- f) That all party lists under Article 90 to commence with a woman nominee and not a man. This will create room that increases the number of women nominated to the assemblies through the party list and in the long run reduce the number of women needed to top up in the assembly for it to be compliant.

- g) That the number of elective seats be recommended to be 50:50 at Senate (double (elect male and female) per county) and National Assembly. That the number of the Counties, Constituencies and County assemblies is high and there is need to review them downwards.
- h) That the Office of the Registrar of Political Parties be given power to deregister parties that are not compliant with the gender principle while developing their rules, constitutions and generating their lists of nominees for elections.
- i) The Gender Principle be implemented during recruitment and in career progression at various levels of government. This will give the government the moral authority to also demand for it from the private service.
- j) That there is a need to have solid indicators to measure the progression of the gender principle in the public service reported within set timelines. There should be a reporting mechanism and a form of sanction(s) when not adhered to.
- k) Need to enhance the budget of Ministries Departments and agencies (MDAs) to ensure Gender Responsiveness. A proposal that all MDAs should allocate at least two per cent of their budgets to gender related activities.
- l) That there be consideration to have a gender related fund within the political party's fund or have the same provided separately under the political party's act to enable promotion of gender related activities.

PROPOSED LEGISLATIVE FRAMEWORK

From the foregoing analysis of previous and emerging proposals, the MSWG recommends the **GENDER TOP-UP THROUGH PARTY LISTS**.

After the General Election, the missing gender necessary to meet the Gender Principle in the National Assembly and Senate shall be topped up using the zebra party lists provided through Article 90 (1). Whereas currently, the missing gender has been women, it is necessary that the gender top up list be in zebra format so that should the missing gender in future be men, they get nominated accordingly using the same list.

For the special seats to meet the principle, we propose that Article 90 is amended to ensure that the nomination facilitates a candidate to go into an election competitive seat after two terms.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

RECOMMENDATIONS

CONSTITUTION AND LEGISLATIVE AMENDMENTS PROPOSED

a) *Constitutional Amendment to provide for Gender top up*

This recommendation guarantees attainment of the Gender Principle through allocating special seat members necessary to ensure that the Gender Principle is upheld. This will entail adopting and applying the framework in place at the County Assembly to the Senate and the National Assembly. The proposal is in the following terms that are reduced in a draft constitutional amendment as annexed.

- Amending Article 90 to accommodate proposals to amend Articles 97 and 98 accordingly;
- Amending Article 97 to provide for a formula to nominate additional special seat members of the National Assembly if, after declaration of results following a General Election, the membership of the National Assembly does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender;
- Amending Article 98 to provide for a formula to nominate additional special seat members of the Senate if, after declaration of results following a General Election, the membership of the Senate does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender; and
- Inserting a transitional clause in Article 98A to enable the current Parliament to conform with the requirements of Article 81(b).

The structure of the Bill is as follows:

Clause 1 provides for the title of the Bill.

Clause 2 proposes to amend Article 90 to require that the election for the special seats to be added in the National Assembly and Senate shall be on the basis of proportional representation by use of party lists.

Clause 3 proposes to amend Article 97 to provide the number of special seat members necessary to ensure that no more than two-thirds of the membership of the National Assembly are of the same gender. The amendment is intended to take

effect only if the membership of the National Assembly does not conform to the constitutional principle, that no more than two-thirds of the members of the House are of the same gender.

Clause 4 proposes to amend Article 98 to provide the number of special seat members necessary to ensure that no more than two-thirds of the membership of the Senate are of the same gender. The amendment is intended to take effect only if the membership of the Senate does not conform to the constitutional principle that no more than two-thirds of the members of the House are of the same gender.

Clause 5 proposes to insert a new Article 98A to enable parliamentary political parties to prepare fresh party lists for nomination of special seat members necessary to ensure that no more than two-thirds of the membership of the current Parliament are of the same gender.

None of the proposed amendments relate to the matters set out under Article 255 (1) and therefore need not be approved by a referendum.

The enactment of this Act shall occasion additional expenditure of public funds, which shall be provided for in the estimates.

b) *Amendment to the Elections Act*

The MSWG recommends specific amendment to the Election's Act specifically Sections 31, 35A and 36 in the terms annexed hereafter.

The principal object of this Bill is to amend the Elections Act (Cap 7) to provide that:

- A political party shall ensure that the names of the party candidates submitted to the Electoral Commission under this section in a General Election for parliamentary and county elections complies with the principle that not more than two-thirds shall be of the same gender.
- A party list submitted for persons with disabilities shall be accompanied by a certification from the National Council for Persons with Disabilities.
- Disputes arising out of the certification of a party list shall be referred to the Electoral Commission's Dispute Resolution Committee.
- A party list for special seats under Section 36 shall commence with the name of a female candidate and alternate between male and female candidates in the priority in which they are listed.
- The Independent Electoral and Boundaries Commission shall draw from the list four special seats members in the priority given by the party in the following order—
 - i. persons with disabilities
 - ii. youth;
 - iii. marginalised groups, including ethnic and minorities.

THE STRUCTURE OF THE BILL IS AS FOLLOWS:

Clause 1: Provides for the citation of the Bill.

Clause 2: Seeks to amend Section 31 by inserting a new sub-section after sub-section (2F) requiring political parties to ensure that the names of the party candidates submitted to the Electoral Commission in a General Election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.

Clause 3: Amends section 35A of the principal Act to provide for certification of persons with disabilities and to refer disputes arising from the certification process to the IEBC Committee in the first instance.

Clause 4: Amends section 36 of the Act to provide that special seat party lists commence with the name of a female candidate and alternate between male and female candidates in the priority in which they are listed. This Clause also provides that the Commission shall draw from the list four special seats members in the priority given to persons with disabilities, youth, marginalised groups including ethnic and minorities.

The Bill does not delegate any legislative powers and does not limit any fundamental rights and freedoms.

The Bill is a Bill concerning county governments. It contains provisions relating to the election of Members of County Assemblies.

The enactment of this Act may occasion additional expenditure of public funds, which shall be provided for in the estimates.

Amendment to the Political Parties Act

The MSWG recommends the amendment of the Political Parties Act to provide for establishment of Women Inclusion and Political Participation Fund for purposes of financing education and training, mentorship, and capacity building, including the support for women seeking elective positions.

The principal object of this Bill is to amend the Political Parties Act, (Cap 7D) to establish the Women's Inclusion and Political Participation Fund as the institutional framework for equipping more women to successfully contest legislative seats in greater numbers.

This initiative has the potential to eliminate the necessity for top-up nominations in future. The Bill seeks to capture the proper spirit of affirmative action and promote the essence of the greater gender inclusion agenda.

It is expected that the provisions of the funds will be an incentive to equip and promote more women to run for office which, in a few election cycles, ought to bring the number of women contesting and winning elections to at least the same level as



men. Notably, the Gender Principle is a mathematical ratio process. The more women get elected, the fewer requirement there will be for top-up seats.

The enactment of Equality Law

The MSWG recommends that as a long-term consideration, Parliament enacts a gender equality law that will holistically implement Article 27 of the Constitution.

Enact Article 100 Legislation

The Constitution require Parliament to enact legislation to promote representation of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities to Parliament. Within the transitional clause, the law was to be in place within five years after promulgation of the Constitution. To date, the law has not been put in place. It is an opportunity for Parliament to move with speed and enact the said law.

ADMINISTRATIVE RECOMMENDATIONS

The MSWG makes administrative recommendations aimed at achieving gender equality and empowerment of women and girls. Further, they aim at creating an enabling environment for women to actively engage in politics in Kenya at all levels. These include the following:

Combatting campaign-related Gender-Based Violence

Gender-Based Violence has been identified as a major barrier for women participation in politics. Based on this finding, the Working Group recommends development and enforcement of mechanisms to prevent and respond to gender-based violence. This policy will create a secure environment for women involved in politics.

Implementation of the Campaign Financing Law

It was noted that there was no gender parity in the political landscape with regard to financial equality during campaigns and elections.

The Working Group recommends full implementation of the legislative measures in place to ensure gender parity in campaign financing. This comprehensive approach includes regulations to promote financial equity during election campaigns.

a) *Robust Reporting Framework*

A framework is important to facilitate the monitoring and evaluation of progress in achieving gender balance and ensuring transparency and accountability in the implementation process.

The working group proposes the development of a robust reporting framework, providing gender statistics and data with regard to public offices and gender representation.

b) *Gender-responsive Budgeting*

The Working Group recommends allocation of resources with the intention of addressing disparities in gender representation. This proposal would include allocation of funds to gender specific programmes. This would, therefore, call for development of a policy on gender-responsive budgeting which takes into consideration gender-based imbalances in political processes and campaigns.

c) *Strengthening County Gender Sector Working Groups (CGWGs)*

The Working Group recommends enhancing the capacity and effectiveness of County Gender Sector Working Groups. This would involve providing sufficient resources and training to these groups and support them in actively promoting and the implementation of the Gender Principle at the county level.

d) *Establishment of Gender Desks in Public Institutions*

The Working Group recommends the administrative establishment of gender desks within public institutions to serve as focal points for addressing gender-related concerns, ensuring compliance with gender equality principles and facilitating the integration of gender perspectives into institutional policies and practices.

e) *Sensitisation of gender equality in schools*

Administrative actions were recommended to introduce sensitisation programmes on gender equality in educational institutions. This involves incorporating gender equality topics in school curricula, creating awareness among learners about the significance of balanced gender representation and challenging traditional gender norms from an early age. The administrative focus on education aims to instill values of inclusivity and equality among the younger generation.

f) *Advocacy and Public Education Campaigns*

It is important to develop an advocacy campaign and use vernacular stations and social media to communicate with citizens to promote the gender agenda. This will include profiling success stories. Use the media once the implementation framework is agreed on to create awareness, highlight gender disparities and showcase successful stories as part of the process of promoting public education.

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2024

A Bill for

An Act of Parliament to amend the Constitution of Kenya, 2010 by Parliamentary initiative pursuant to Article 256 of the Constitution.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2024.

Amendment of Article 90 of the Constitution

2. Article 90 of the Constitution is amended by—

(a) in clause (1), by deleting the expression “Articles 97(1)(c) and 98(1)(b), (c) and (d)” and substituting therefor the expression “Articles 97(1)(c) and (1A) and 98(1)(b), (c), (d) and (1A) ;

(b) in clause (2) by inserting the following new paragraphs immediately after paragraph (c)—

“(d) members of a political party are democratically involved in the generation of the party list through a fair and competitive process as set out in the respective party constitution and nomination rules;

(e) each party list reflects the representation of the marginalised groups set out in Article 100 to the greatest extent possible taking into account the nature of the party list;

(c) inserting the following new clause immediately after clause (3)—

“(4) A person elected under clause (1) for a seat shall not hold such office for more than two terms in one elective body.

Amendment of Article 97 of the Constitution

3. Article 97 of the Constitution is amended by inserting the following new clauses immediately after clause (1)—

(1A) In the event that the membership of the National Assembly under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender.

(1B) The number of special seats under clause (1A) shall be determined after the declaration of the results of the general election.

Amendment of Article 98 of the Constitution

4. Article 98 of the Constitution is amended by inserting the following new clauses immediately after clause (I)—

(1A) In the event that the membership of the Senate under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender.

(1B) The number of special seats under clause (1A) shall be determined after the declaration of the results of the general election.

Insertion of Article 98A

5. The Constitution is amended by inserting the following new Article immediately after Article 98—

98A. Transitional Provision

(1) For the purposes of ensuring that the current Parliament conforms to the requirements of Articles 27 (8) and 81(b), the Independent Electoral and Boundaries Commission shall—

(a) within thirty days after coming into force of this Act, publish a notice in the gazette—

(i) requiring parliamentary political parties to submit fresh party lists for the purposes of nominating additional special seat members to ensure that no more than two-thirds of the members of the National Assembly and the Senate are of the same gender;

(ii) specifying the day upon which political parties shall submit the party lists in accordance with Article 90 ;and

(iii) specifying the day for the nomination of candidates for the parliamentary election;

(b) within thirty days after the receipt of party lists, designate, from each qualifying list, the party representatives on the basis of proportional representation in accordance with Article 90.

(2) The procedures for handling nominations for party lists during a general elections under the law relating to elections shall apply with necessary modifications to nominations under this Article.

(3) For the purposes of Article 90(4), a person elected under this Article shall be deemed to have served a full term.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Constitution of Kenya through Parliamentary initiative by proposing amendments which do not constitute matters set out under Article 255(1) requiring approval through a referendum. The amendments relate to:

- (a) Amending Article 90 to accommodate the proposals to amend Articles 97 and 98 accordingly;
- (b) Amending Article 97 to provide for a formula to nominate additional special seat members of the National Assembly if, after declaration of results following a national election, the membership of the National Assembly does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender;
- (c) Amending Article 98 to provide for a formula to nominate additional special seat members of the Senate if, after declaration of results following a national election, the membership of the Senate does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender;and
- (d) Inserting a transitional Article 98A to enable the current Parliament to conform with the requirements of Article 81(b).

The structure of the Bill is as follows:

Clause 1 provides for the title of the Bill.

Clause 2 proposes to amend Article 90 to require that the election for the special seats to be added in the National Assembly and Senate shall be on the basis of proportional representation by use of party lists.

Clause 3 proposes to amend Article 97 to provide the number of special seat members necessary to ensure that no more than two-thirds of the membership of the National Assembly are of the same gender. The amendment is intended to take effect only in the event that the membership of the National Assembly does not conform to the constitutional principle, that no more than two-thirds of the members of the House are of the same gender.

Clause 4 proposes to amend Article 98 to provide the number of special seat members necessary to ensure that no more than two-thirds of the membership of the Senate are of the same gender. The amendment is intended to take effect only in the event that the membership of the Senate does not conform to the constitutional principle, that no more than two-thirds of the members of the House are of the same gender.

Clause 5 proposes to insert a new Article 98A to enable parliamentary political parties to prepare fresh party lists for nomination of special seat members necessary to ensure that no more than two-thirds of the membership of the current Parliament are of the same gender.

Statement that the proposed Bill does not relate to matters set out under Article 255 of the Constitution

None of the proposed amendments relate to the matters set out under Article 255 (1) and therefore need not be approved by a referendum.

The enactment of this Act shall occasion additional expenditure of public funds, which shall be provided for in the estimates.

Dated the day February, 2024

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Chairperson, Justice and Legal Affairs Committee

Article 90 of the Constitution which it is proposed to amend

90. Allocation of party list seats

(1) Elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of county assemblies under article 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists.

(2) 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—

- (e) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;
- (f) 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; and
- (g) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.

(3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.

Article 97 of the Constitution which it is proposed to amend

97. Membership of the National Assembly

(1) The National Assembly consists of—

- (a) two hundred and ninety members, each elected by the registered voters of single member constituencies;
- (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;
- (c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and
- (d) the Speaker, who is an ex officio member.

(2) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1)(a).

Article 98 of the Constitution which it is proposed to amend

98. Membership of the Senate

(1) The Senate consists of—

- (a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;
- (b) sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90;
- (c) two members, being one man and one woman, representing the youth;
- (d) two members, being one man and one woman, representing persons with disabilities; and
- (e) the Speaker, who shall be an ex officio member.

(2) The members referred to in clause (1)(c) and (d) shall be elected in accordance with Article 90.

(3) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1)(a).

ELECTIONS (AMENDMENT) BILL, 2024

A Bill for

An Act of Parliament to amend the Elections Act and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Elections (Amendment) Act, 2024.

Amendment of
section 31 of
Cap 7

2. The Elections Act, in this Act referred to as “the principal Act”, is amended in section 31 by inserting the following new sub-sections immediately after subsection (2F)—

“(2G) A political party shall ensure that the names of the party candidates submitted to the Commission under this section in a general election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.

(2H) The compliance under section 2G shall be determined—

(a) in the case of the Senate, at national level;

(b) in the case of the National Assembly, at county level; and

(c) in the case of county assemblies, at constituency level.

Amendment of
section 35A of
Cap 7

3. Section 35A of the principal Act is amended by—

(a) inserting the following new subsection immediately after subsection (1)—

“(1A) A party list submitted under subsection (1) (f) shall be accompanied by a certification from the National Council for Persons with Disabilities.”

(b) deleting sub-section (3) and substituting therefor the following new sub-section—

“(3) Any dispute arising out of the certification of a party list under sub-section (2) shall be referred to the Commission Dispute Resolution Committee.”

Amendment to
section 36 of
Cap 7

4. Section 36 of the principal Act is amended by—

- (c) deleting sub-section (2) and substituting therefor the following new sub-section—

“(2) A party list submitted under section 1 (a), (c) (d) (e) and (f) shall commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed.”

- (d) deleting sub-section (3) and substituting therefor the following new sub-section—

“(3) For purposes of Article 177(1)(c) of the Constitution, the Commission shall draw from the list under sub-section (1)(f) four special seats members in the priority given by the party in the following order—

- (a) persons with disabilities
- (b) youth;
- (c) marginalized groups including ethnic and
- (d) minorities.”

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Elections Act (Cap 7) to provide that:

- a) A political party shall ensure that the names of the party candidates submitted to the Commission under this section in a general election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.
 - i. A party list submitted for persons with disabilities shall be accompanied by a certification from the National Council for Persons with Disabilities.
- b) Disputes arising out of the certification of a party list shall be referred to the Commission Dispute Resolution Committee.
- c) A party list for special seats under Section 36 shall commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed.
- d) The Independent Electoral and Boundaries Commission shall draw from the list four special seats members in the priority given by the party in the following order—
 - i. persons with disabilities
 - ii. youth;
 - iii. marginalized groups including ethnic and minorities.

The structure of the Bill is as follows:

Clause 1: Provides for the citation of the Bill.

Clause 2: Seeks to amend section 31 by inserting a new subsection after subsection (2F) requiring political parties to ensure that the names of the party candidates submitted to the Commission in a general election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.

Clause 3:Amends section 35A of the principal Act to provide for certification of persons with disabilities and to refer disputes arising from the certification process to the IEBC Committee in the first instance.

Clause 4: Amends section 36 of the Act to provide that special seat party lists commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed. This Clause also provides that the Commission shall draw from the list four special seats members in the priority given persons with disabilities, youth, marginalized groups including ethnic and minorities.

The Bill does not delegate any legislative powers and does not limit any fundamental rights and freedoms.

The Bill is a Bill concerning County governments. It contain provisions relating to the election of members of county assemblies.

The enactment of this Act may occasion additional expenditure of public funds, which shall be provided for in the estimates.

Dated the day February, 2024

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Chairperson, Justice and Legal Affairs Committee

POLITICAL PARTIES (AMENDMENT) BILL, 2024

A Bill for

An Act of Parliament to amend the Political Parties Act and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Political Parties (Amendment) Act, 2024.

Insertion of a
new section to
Cap 7D

2. The principal Act is amended by inserting the following new section immediately after section 29—

Women Inclusion
and Political
Participation Fund

29A. (1) There is established the Women Inclusion and Political Participation Fund which shall be administered by the Registrar separately from the Political Parties Fund.

(2) The sources of the Fund shall include—

(a) such funds not being less than fifteen percent of the Political Parties Fund as may be determined by the National Assembly; and

(b) contributions and donations to the Fund from any other lawful source.

(3) The Fund shall be used for purposes of financing education and training, mentorship and capacity building for women seeking elective positions.

(4) The Registrar may make Regulations for the better carrying into effect the provision of this section.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Political Parties Act, (Cap 7D) to establish the Women's Inclusion and Political Participation Fund as the institutional framework for equipping more women to successfully contest legislative seats in greater numbers. This initiative has the potential to eliminate the necessity for top-up nominations in the future. The Bill seeks to capture the proper spirit of affirmative action and promote the essence of the greater gender inclusion agenda.

It is expected that the framework will equip and promote more women to run for office which, in a few election cycles, will bring the number of women contesting and winning elections to at least the same level as men.

The structure of the Bill is as follows:

Clause 1 provides for the title of the Bill.

Clause 2 seeks to introduce a new section 29A to establish the Women Inclusion and Political Participation Fund to be administered by the Registrar separately from the Political Parties Fund. The Fund shall be used to finance education and training, mentorship and capacity building for women seeking elective positions. It shall comprise of an amount equivalent to not less than fifteen percent of the Political Parties Fund as the National Assembly may determine.

The Bill delegates the power to make Regulations on administration of the Fund to the Registrar of Political Parties and does not limit any fundamental rights and freedoms.

The Bill is a Bill concerning county governments. It contains provisions relating to the election of members of a county assemblies.

The enactment of this Act may occasion additional expenditure of public funds, which shall be provided for in the estimates.

Dated the day February, 2024

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Chairperson, Justice and Legal Affairs Committee