

**AN ANALYSIS OF THE BUILDING BRIDGES INITIATIVE (BBI) REPORT
IN RELATION**

TO

**SDG 5: ACHIEVE GENDER EQUALITY AND EMPOWER ALL WOMEN
AND GIRLS IN KENYA**

AND

CONSTITUTION OF KENYA, 2010

Compiled For SDG Forum Kenya

By

KENNETH VICTOR ODARY

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Abbreviations and Acronyms

BBI	Building Bridges Initiative
CAJ	Commission Administration Justice
CIOC	Constitution implementation and Oversight Committee
CREAW	Centre for Rights Education and Awareness
CSO	Civil Society Organisations
CWMNA	County Women Member of National Assembly
CWR	County Women Representative
FGM	Female Genital Mutilation
FIDA	International Federation of Women Lawyers
FPTP	First Past The Post
GBV	Gender Based Violence
IEBC	Independent Electoral and Boundaries Commission
KNCHR	Kenya National Commission on Human Rights
KNHRC	Kenya National on Human Rights and Equality Commission
ORPP	Office of the Registration of Political Party
PLWD	Persons living With Disability
PR	Proportional Representation
PPLC	Political Party Liaison Committee
MAT	Multi Agency Team
MCA	Member of County Assembly
MMPR	Mixed Member Proportional Representation
MNA	Member of National Assembly
MTP	Medium Term Plan
NGEC	National Gender & Equality Commission
NGAAF	National Government Affirmative Action Fund
NGCDF	National Government Constituency Development Fund
NPD	National Political Dialogue
SDG	Sustainable Development Goals
SIG	Special Interest Groups
WDF	Ward Development Fund
VPTF	Victim Protection Trust Fund

Executive Summary

The promulgation of the Constitution of Kenya reset the country in its bid to promote rights and inclusion. The Constitution promised equality and non-discrimination, indeed the overall text of the constitution was adorned with progressive text calling for equal enjoyment of all rights and freedoms without any discrimination on the basis of a wide range of fields including race, ethnicity, gender, pregnancy, marital status, and religion. It also prescribed the establishment of affirmative action programmes to address cases of disadvantage arising from past discrimination. Since 2010, Kenya has also enacted several laws promoting and establishes important gains on women's rights and gender equality while several jurisprudence on equality have emerged from the judiciary that are yet to be acted upon.

In terms of political representation structure changed drastically in 2013 and 2017 elections. More women were elected in the executive and legislature at both county and national levels. Kenya has also witnessed a progressive judiciary credited for making land mark rulings promoting gender equality and protecting women reproductive, economic and social rights. A number of implementation mechanisms were also put in place to further the promise of the constitution on equality and inclusion. In sync, the country had also been implementing agenda 2030, sustainable development goals, a set of 17 goals adopted by nations committing to the realization of human rights of all, achieve gender equality, and empower women and girls among other things.

Since its enactment a decade ago, there have been remarkable challenges to the Constitution. A three pronged typology of challenges characterized by lack of implementation, interpretation and inconsistencies emerged. Attempts to provide remedy and relief to these challenges through legislation, litigation and elections in 2013 and 2017 were inadequate. In particular, the stalemate over the one-third gender rule, political representation and accountability sowed mistrust in the promise of the constitution and its institutions. This then morphed into a political and social crisis following the annulment of the 2017 presidential contest. During a short period of time, Kenya was engulfed with political uncertainty and the states inability to guarantee citizen's rights until the events of March 10, 2018.

The 'handshake' between two Kenyan leaders committed to ending the state of political uncertainty. The 'handshake' gave birth to the Building Bridges Initiative team whose key mandate was underpinned by a nine-point agenda. This was outlined as Lack of National Ethos; Responsibilities and Rights; Ethnic Antagonism and Competition; Divisive Elections; Inclusivity; Shared Prosperity; Corruption; Devolution; and Safety and Security. On the 26th October, 2020 the report "Building Bridges to a united Kenya: from a nation of blood ties to a nation of ideals" was unveiled. This unveiling came against a backdrop that, women and indeed other marginalized persons; had not achieved the promises contained in the Constitution of Kenya 2010. The Chief Justice of Kenya also issued an advisory on 22nd September, 2020 that underpinned this broken covenant. It is against this backdrop that SDGs Kenya Forum analyzed the BBI taskforce report to apprehend whether the proposed reforms will add value to the gains already made or be detrimental to work in progress.

The analysis found that the BBI process intends to make amendments to the 2010 Constitution with a good number of changes relating to provisions on women, youth and PLWDs. These amendments revolve around six out of the nine agenda items namely, Rights and responsibilities, Divisive Elections; Inclusivity; Shared prosperity, Devolution and Safety and Security. Other remaining agenda items including Lack of Ethos, Responsibility and rights, Ethnic Antagonism and Completion and Corruption are covered either through policy, legislative and administrative prescriptions. Some of the key highlights are summarized here in brief as follows;

Responsibilities and rights: In sum, the BBI taskforce reaffirms the Bill of Rights that contains specific gains in relation to rights of women youth and PLWDs and goes further to expand it by including protection of personal data. There is also a proposal to have a patient's bill of rights¹. In particular, the BBI taskforce calls for the entrenchment of article 43 on social and economic rights in government policy. To tackle past human rights excesses, the BBI suggest compensation for victims of past human rights violations. BBI taskforce suggest a Kenyan Charter of Citizen Responsibilities inspired by the National Anthem and the National Values, and includes a Patriot's Pledge to the Nation and the Constitution of Kenya. Among the provisions in the citizens charter is the responsibility to fulfil parental care towards their children.

The BBI taskforce seeks to strengthen and advance human rights in the emerging area of data which is important in view of the rising risk of cyber-crime and cyber security. A review of existing laws to reflect this proviso will therefore be necessary. The patients' bill of rights also suggests a cure for unnecessary detention in health facilities especially for Women. Further, while it affirms the rights of women, youth and PLWD, the provisions on citizen responsibility suggest some recognition of unpaid care work. However, the utility of other provisions in the charter of citizenship responsibilities is lost especially when compared against the current article 10, which lays out concrete values necessary for a system of governance to achieve the political vision set out in the constitution.

Divisive elections: The BBI taskforce posits that the existing first-past-the-post (FPTP) system is a leading cause of the highly divisive elections, which produced an unfavourable proportional representation system. As it is currently, the CoK, 2010 provides for a National Assembly consisting of 290 elected members from single constituencies, 47 County Women Representatives and 12 special selected members representing special interest groups (SIGs) thus totalling to 349 elected members. As a remedy, the BBI proposes the current proportional representation and special seats in the national assembly be replaced by a mixed member proportional representation (MMPR) system while taking into account the two-thirds gender rule and the Constitutional requirement. As a result, the composition of parliament will include 290 members from single constituencies elected through FPTP and 70 members elected through MMPR, thus in total Parliament will have 360 elected members. Additionally, there is suggested provision to have Cabinet ministers selected from outside of the national assembly who will be ex official members.

Although the overall picture is encouraging, the introduction of a MMPR system at face value does not seem to cure the two third representation of either gender in the National Assembly. Thus BBI recommendations may undermine the inclusion of persons with disabilities, thereby degrading the institutional arrangements through which persons with disabilities exercise elected representation. Additionally, the MMPR system may create a new set of challenges especially given that political parties are expected to implement through party lists while there structures remain unreformed and patriarchal. Further, the proviso for selection of ex-officio members is not specific on whether selection should be in conformity to the two third gender rule. The BBI taskforce recommendations, removes the CWR seats and those reserved for persons with disabilities in the National Assembly. The BBI taskforce in tackling the electoral system does not address the issue of independent candidates as provided for under article 85 of the Constitution of Kenya.

Inclusivity: The BBI taskforce recognizes that women have not achieved the promises contained in the Constitution of Kenya 2010. As a remedy the BBI proposes a raft of recommendations to cure some of the issues promoting inequality and exclusivity in representation. The BBI taskforce contains proposals for achieving gender parity in the Senate by way of introducing 47 seats for women to bring the total to 94 senators representing either gender that will bring parity between men and women. In the National Assembly, the taskforce recommends abolition of the replacement of the proportional system with a MMPR to achieve two-thirds gender rule constitutional requirement. In this process it does away with the current 47 women representatives and 12 nominated members of the national assembly and 18 senators. Similarly, the County top leadership is henceforth expected to comprise of either gender in its top leadership.

The introduction of a MMPR system does not seem to cure the two third representations in the National Assembly. The inconsistency in creating gender parity is also evident in positions within the National Executive identified as President Deputy President, Prime Minister, and Two Deputy prime ministers including Cabinet Ministers. This is further evident when examined from the perspective of parliamentary and senate house and departmental committees leadership positions. Then there is also the loss of County Women Representative (CWR) seats that will be accompanied with the double loss by women of a seat during decision making on national resources as well as the National government affirmative kitty.

Shared Prosperity: The BBI taskforce proposes enabling institutional architecture for the realisation and protection of women's, youth and PLWD and gender equality principles. It reaffirms the Bill of Rights that contains specific gains in relation to rights of women youth and PLWDs. In particular, the BBI taskforce calls for the entrenchment of article 43 on social and economic rights in government policy. The BBI taskforce proposes even more affirmative action measures to compensate for historical inequality and discrimination. The proposed amendment of the Higher Education Loans Board Act, 1995 to allow a four year loan repayment grace periods for university graduates that were only accorded one year initially, will open window for the youth. Additionally, to address economic exclusion, the BBI taskforce suggests amendments to the Micro and Small Enterprises Act, 2012 including a proposed tax holiday for youth entrepreneurs. The BBI taskforce also suggests setting up and institutional framework/mechanisms to advance the gains for women, youth and PLWDs. As such there is a proposed Youth commission to, among others, promote the implementation of the rights of the youth under Article 55.

Although the BBI seeks to strengthen and advance economic wellbeing of especially women, youth and PLWD in terms of employment and entrepreneurship opportunities; this proposal for shared prosperity is shallow in the advancement of gender equality measures and disregards the gender principles of access control of resources such as land. While the youth commission is a noble intervention, the BBI taskforce does not purpose its governance structure to take into account gender parity in the composition of the implementation mechanisms. The framing of proposals and suggestions is targeted at public/government institutions while not obligating private organizations. .

Devolution: In terms of resource sharing, the BBI taskforce recommends increased allocation to County Governments from at least 15% of last audited accounts to 35% with a 70:30 ratio biased

towards development. There are also suggestions in the BBI taskforce to create a ward development fund (WDF) for capital expenditure in the Counties for purposes of Article 43.

While the increase in resources at the county level as suggested will improve delivery of services and other developments, equally important is to have robust accountability mechanisms. The ratio 70:30 bias towards development though good, will not necessarily respond to the felt gender needs at the neither County level nor gender responsive. While the suggestion for WDF is important, the lack of women, youth and PLWDs in elective positions at the ward level is glaring. The lack of criterion for membership to the WDF implementation mechanisms to advance gender equality measures disregards the gender principles of access control of resources. Therefore, they run the risk of being left out in decision making much in the same way as in NG-CDF whereby the patrons have been mostly male legislators. As such, there may be need to ring-fence some of the funds so that they are allocated to areas that are responsive to women, youth and PLWD.

Safety and Security: The BBI taskforce proposes to amend Chapter Four of the Constitution on the Bill of Rights to provide a constitutional underpinning for privacy of personal data of citizens as an emerging area in human rights owing to technological advancement. Clause 5 of the Bill proposes to amend Article 31 (Privacy) to incorporate the right for the protection of personal data of citizens. There are also the changes to the Elections Offences Act 2016 proposed by the BBI taskforce, to enhance penalties against perpetrators of violence against women during elections. Included also is a proposal to resource gender and sexual violence policy and prevention measures. Another innovation in the BBI taskforce relates to the effecting of a Victim Protection Trust Fund (VPTF), which however gives special attention to victims of terrorism.

The proposal on privacy of personal data of citizens will cure some emerging form of cybercrime particularly targeted at women. There will be need to review existing GBV protection frameworks to enhance protection of rights. The proposal to resource gender and sexual violence policy and prevention measures is hollow in the face of limited funds allocated to gender functions at national and county levels. In this regard, some form of capitation needs to be done for the gender function budget line at national and county level. In terms of the Victim Protection Trust, the BBI taskforce needs to address the issues of all violence victims but particularly women and girls post-election and ethnic GBV victims.

In view of the foregoing, a number of opportunities for advancing and strengthening SDG 5 may emerge as follows;

Recommendations for advancing agenda 2030: In line with SDG 5 target (1) Ending all forms of discrimination against all women and girls everywhere (2) Eliminating all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation. And (3) Eliminating all harmful practices, such as child, early and forced marriage and female genital mutilation.

- Call for the expansion of beneficiaries of the victims protection funds to include survivors of post-election and ethnic gender based violence.
- Review all cybercrime and cyber security laws to align and reinforce data protection measures.

- Generate a costing study for prioritizing combatting Gender Based and Sexual violence to advocate for resourcing specific policy & prevention measures.
- Participate in discussions at county level on rites of passage for male and females that conform to the constitution.

In line with SDG 5 target number 4, Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.

- Support policy and legislative measures towards ensuring shared parental responsibility

In line with SDG 5 target number five, Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life.

- Support efforts to strengthen political parties' grassroots structures, formulate gender equality statements, gender policies and procedures that will allow adequate and quality political participation of women, Youth and PLWDs.
- Engage with the Political Parties Liason Committee (PPLC) to support the Office of the registrar of Political parties (ORPP) to ensure enforcement and compliance to the political parties Act and the amendments related to election nominations and campaign financing
- Galvanize efforts among CSO's and Women leaders to introduce constitutional or legislative measures ring fencing 70 MMR seats for Women, Youth And PLWDS or alternatively, lobby political parties to nominate women to vie for seats in populous regions to get elected directly.
- Voice the need for two thirds gender rule to equally apply in the selection and appointment of Cabinet members appointed from outside the national assembly

In line with SDG 5 target seven: undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.

- Mobilize civil society and women rights organization to lobby for introduction of statute to ring fencing National Government Affirmative Action Funds (NGAAF).

In line with SDG 5 target eight: Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women.

- Promote efforts and innovations that enhance greater data protection measures in policy and legislation

In line with SDG 5 target nine: adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

- Mobilize civil society and women rights organization lobby for introduction of statute to ring fencing National Government Affirmative Action Funds.
- Build a civil society accountability mechanisms to ensure spending of devolved funds is tracked are spent on priority issues identified by women, youth and PLWD.
- Sensitize county governments and citizens on gender responsive budgeting and social accountability mechanisms
- Promote realization of SDG 5 at county level by ensuring that 30% of development vote is allocated to gender departments at county level
- Capacity building of ward representatives on applying gender principles to public policy and legislation

- Increase capacity of County based CSO's to engage at the County level on public policy and legislation

This report is divided into four sections. The introductory part provides the development context while the second part delves into the constitutional imperatives. The Third part addresses the challenges and part four looks into the BBI proposals. The last part of the report offers suggestions for interventions and advocacy.

I.0 Introduction

I.1 Development Context

Gender equality and the rule of law are complementary and mutually-reinforcing. These intertwined principles are cross-cutting throughout the 2030 Agenda development paradigm. The 2030 Agenda's vision of leaving no one behind is ambitious and only if women and girls are at the heart of the development efforts, the international community will be able to transform the SDGs from paper to reality. SDG 5 stands to protect women and girls from all forms of violence, harmful cultural practices, un-equal access to sexual and reproductive health care, unequal land rights, unpaid care work and unequal access to leadership and decision making while adopting and strengthening policies and enforceable legislation for gender equality.

The 2030 agenda came against a backdrop where Kenya was already implementing the Constitution of Kenya, 2010 alongside Vision 2030, its long term Economic blueprint for accelerating transformation of the country into a rapidly industrializing middle income nation by the year 2030. Notably, the Constitution of Kenya, 2010 acknowledges that development is primarily about people and therefore adopts a human rights-based approach to development. The Constitution has a comprehensive Bill of Rights which sets out both the rights extending to all individuals and those of specific groups, including children, youth and persons with disabilities. In the same token, the time-frame of Kenya's Vision 2030 coincides with the timeframe for the SDGs.

Women in Kenya together with youth and persons with disability are among the groups that are marginalized in society. This has been the case despite the last two National Population Census showing existence of more women than men in Kenya whilst also showing that the country has more youthful population. Women, youth and persons with disability have had limited access to leadership opportunities due to the prevalent patriarchal culture, laws and policies as well as other socio-cultural and economic factors. Despite efforts to enhance gender equality, women's participation in political activities largely consists of women voters and not candidates in elective or appointive offices.

The Kenyan Constitution 2010 was seen as a cure to the historical malaise. It promised the foundation for transformational changes to a governance system that is more transparent, accountable, effective in service delivery, and responsive to empowered citizens. At the same time, it was expected that it will help minimize corruption, increased marginalization, exacerbated conflict and disruptions in service delivery. In particular, the constitution introduced provisions to its constitutional and legal framework for equality and inclusion. Since then, Kenya has held two general elections in 2013 and 2017 that ushered in many of the intended reforms. However, the wholesome implementation of principles of equality and inclusion remains elusive and distant while virulent electoral related violence has continued to occur with devastating effects on women, youths and PLWDS.

The annulment of the August 2017 general election by the Supreme Court of Kenya and subsequent fresh presidential elections, brought to the fore the continued political divisions and ethnic schism in the country. The March 9th 2018, handshake between the President and the Opposition leader birthed the idea of building bridges for national unity. This rapprochement borrowed from national political dialogue approach in that it sought to cure broad set of political issues through a special taskforce operating outside known governance mechanisms with a defined agenda. The outlined nine point agenda consisted of Lack of National Ethos; Responsibilities and Rights; Ethnic Antagonism and Competition; Divisive Elections; Inclusivity; Shared Prosperity; Corruption; Devolution; and Safety and Security.

1.2 The Building Bridges Initiative to Unity Agenda and SDG 5: Achieve gender equality and empower all women and girls in Kenya

The events of March 2018, though unique, were not isolated. The closing of ranks between two bitterly opposed factions through the Building Bridges initiative to National unity is what is described as National Political dialogue. NPD dialogues represent a means to establish a new political settlement during a phase of political transition. Such was the case in Kenya during the 2007-2008 skirmishes that birthed the Constitution of Kenya, 2010 and then in 2017 under which the BBI was realized. Political settlements are essentially agreements forged between the major stakeholders within a society on the organization of political and economic power and the allocation of resource.

NPDs are normally characterized by an agenda providing a comprehensive list of issues and topics for discussion during a dialogue. Notably, the agenda is intended to decrease uncertainty during the dialogue process and help guarantee that the dialogue makes progress. A focused agenda also guarantees a successful dialogue by ensuring that the NPD does not address single dialogue issues, rather it addresses broad political issues and operates outside the existing governance framework. In the case of BBI, this took the form of a fourteen member committee with two joint secretaries. Alongside it, a nine-point agenda was mooted during its unveiling. This agenda consisted of the need to address Lack of National Ethos; Responsibilities and Rights; Ethnic Antagonism and Competition; Divisive Elections; Inclusivity; Shared Prosperity; Corruption; Devolution; and Safety and Security. The unveiling of the report “Building Bridges to a united Kenya: from a nation of blood ties to a nation of ideals” suggests wide ranging amendments to the Constitution of Kenya, 2010 and enabling policy and legislative frameworks.

These amendments therefore come in the context of the global development agenda, commonly known as Agenda 2030² to which Kenya is a signatory and is now part of its law vide article 2 of the CoK, 2010³. Kenya mainstreamed sustainable development goals in the Third Medium Term Plan (MTP III) 2018- 2022) that mainstreamed the 17 SDGs in government programs, policies, projects and strategies at both national and sub-national levels. In particular, the 2030 Agenda’s vision of leaving no one behind places women and girls at the heart of development efforts. In this regard, SDG 5 stands to protect women and girls from all forms of violence, harmful cultural practices, and unequal access to sexual and reproductive health care, unequal land rights, unpaid care work and unequal access to leadership and decision making while adopting and strengthening policies and enforceable legislation for gender equality.

1.2 Purpose of the Report

The focus of the proposed BBI nine point agenda will have an impact on the constitution as well as vision 2030 with long term effect on Kenya’s ability to advance the agenda 2030 SDGS. It is against this backdrop that SDGs Kenya Forum a platform that promotes Civil Society Organization’s (CSOs) engagement with government sought to apprehend whether the proposed reforms add value to the gains or are detrimental to work in progress towards advancing the SDG No 5 targets listed below;

- I. End all forms of discrimination against all women and girls everywhere.

² Collectively known as the United Nations Framework known as Sustainable Development Goals (SDGs), the agenda comprises 17 goals, 169 targets and 231 indicators to guide development between years 2015 and 2030.

³ Article 2 of the Constitution of Kenya, domesticates commitments to safeguard human rights and fundamental freedoms

2. Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.
3. Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.
4. Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.
5. Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life.
6. Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.
7. Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.
8. Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women.
9. Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

The Overall Goal of this review is to analyse the proposed BBI nine point agenda alongside the constitution to understand the gaps and challenges it brings in trying to respond to gender equality as stated in Articles 10(2), 21(1) and 27(8) of the Constitution, and specifically;

1.2.1 Objectives of the Assessment

1. To highlight the gains attained through the adoption of the Constitution of Kenya, 2010 including enabling legislation and subsequent judicial decisions.
2. To generate a composite of challenges encountered in terms of legislation and subsequent judicial decisions including the 2013 and 2017 general elections.
3. To interrogate the proposed BBI reform agenda against the existing gender equality laws and judicial precedence to determine if it upholds, add or derogates values already in place.
4. To make recommendations for a more inclusive BBI taskforce that holistically incorporates the gender equality dynamics.

1.2.2 Methodology

To comprehend the magnitude of the impact the BBI nine point agenda on women and girls, a political economy gender analysis was undertaken. The analysis was complemented by a literature review of global human rights reports, universal peer review proceedings, voluntary national reports, judicial decisions and election processes observer reports. The emerging qualitative data was subjected to content analysis then coded to focus on the nine agenda issues identified in the BBI.

2.0 Constitutional Imperatives on SDG 5: Achieve gender equality and empower all women and girls in Kenya

2.1 Overview

The Constitution of Kenya put in place a progressive Bill of Rights, including for women and other disadvantaged groups and accountability mechanisms to limit the exercise of power and advance the realization of rights. These features provided an enabling institutional architecture for the realization and protection of the women's rights and gender equality principles delineated in the Constitution. This section highlights the gains of the Constitution of Kenya, 2010.

2.2 National Ethos

The Constitution of Kenya gives prominence to national values and principles of governance. Article 10 (2) of the Constitution provides the national values and principles of governance as follows: a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; (c) good governance, integrity, transparency and accountability; and (d) sustainable development⁴.

Article 232 of the Constitution further provides for the principles that inform public service which include; high standards of professional ethics; efficient, effective and economic use of resources; responsive, prompt, effective, impartial and equitable provision of services; accountability for administrative acts; transparency and provision to the public of timely, accurate information; fair competition and merit-based appointments and promotions; public participation in policy making processes; representation of diverse communities; and affording adequate and equal opportunities for appointment, training and advancement at all levels of public service of men and women; the members of all ethnic groups; and persons with disabilities.

These principles are binding on all State organs, State officers, public officers and all persons whenever any of them applies, or interprets, the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions. Article 132(1) (c) (i) of the Constitution provides that the President shall once every year report, in an address to the nation, on all measures taken and the progress achieved in the realization of national values. The Constitution in Article 234 (c) also requires that the Public Service Commission should promote national values and principles of governance⁵.

2.3 Rights and responsibilities

The 2010 Constitution has progressive provisions on human rights, equality, and inclusion. Chapter Four to the Bill of Rights guarantees equal rights and freedom for women and men, and upholds the principles of non-discrimination and equality. The Bill of Rights is an integral part of Kenya's democratic state. The Constitution of Kenya 2010 expands the bill of rights to include a substantial part of the international bill of rights, including recognizing all the three generations of human rights; that are civil and political rights, economic social and cultural rights. The constitutional Bill of Rights provisions make it mandatory that

⁴ Constitution of Kenya, 2010

⁵ Ibid

the government cannot interfere with its obligations to promote and protect human rights and cannot make legislations that are inconsistent with the constitution⁶.

2.4 Ethnic antagonism and Competition

The Constitution of Kenya, 2010, acknowledges ethnicity as a matter of pride and identity of Kenyans. It also prohibits discrimination on the basis of ethnicity under Article 27(4), and in various provisions encourages ethnic diversity in Government appointments⁷.

2.5 Elections

The Constitution under Articles 97(1) (c), 98(1) (b) (c) and (d) and Article 177 (1) (b) and (c) of provides for election of members of, respectively, the National Assembly, Senate and County Assembly⁸ on the basis of proportional representation. Each political party participating in General elections is required to nominate and submit a list of all persons who shall stand elected if the party were to be entitled to seats provided under Article 90 within the time prescribed by national legislation. Under Article 197 (2) (a) and (b) Parliament is required to enact legislation to ensure that the community and cultural diversity of a County is reflected in its County Assembly and County Executive Committee and prescribe mechanisms to protect minorities within counties⁹.

Article 97 reserves 47 seats for County Women Representatives while Article 98 indicates that the Senate shall consist of sixteen women members who shall be nominated by political parties. Article 177 states that county assemblies consist of the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly is of the same gender.

The Political Parties Act 49 and the Elections Act 50 also demand the implementation of affirmative action provisions in favour of women, who have traditionally been underrepresented in politics. Political parties are now under a legal obligation to ensure that their nominees including women meet the two-thirds gender principle. Section 2 of the Political Parties (Amendment) Act 2016 defines women, youth, and persons with disabilities (PLWD), marginalized communities and ethnic minorities as special interest groups. To support the increased participation of youth and women, the constitution also dedicated seats for women at the county level and a youth seat in the senate.

2.6 Inclusivity

In terms of electing political representation Article 81, indicates that not more than two-thirds of the members of elective public bodies shall be of the same gender. Article 91 (1) (e) requires every political party to respect the right of all persons to participate in the political process, including minorities and marginalized groups. Article 100 requires Parliament to enact legislation to promote the representation in Parliament of, women, persons with disabilities, youth, ethnic and other minorities and marginalized communities.

⁶ Constitution of Kenya, 2010

⁷ Ibid

⁸ Before an election, a political party is expected to nominate candidates under the proportional system and submit the party lists, in order of priority, to the IEBC. After elections, and based on the performance of the party, the Commission allocates seats to those on the party's list under proportional representation to represent special interest including the youth, persons with disabilities and workers.

⁹ Constitution of Kenya, 2010

The tenets of Kenya's equality and inclusion and benefits to the Kenyan women, youth (women and men aged 18-35), persons with disability and marginalized and minority groups borrows from international treaties and conventions by virtue of Article 2 of the Constitution of Kenya, which domesticates these commitments to safeguard human rights and fundamental freedoms.

The Constitution also establishes a set of values and principles in which inclusiveness, equality and non-discrimination are underlined as core values and trump any discriminatory law, practice or action – including in relation to customary norms and tradition (Arts 10 and 27) (while embracing ethnic, cultural and religious diversity)¹⁰. Importantly, the principle of equality is recognised as insufficient to secure the protection of marginalised and minority groups. Measures of affirmative action are included to compensate for historical injustices of inequality and discrimination. This represented an especially important victory for women, and also included recognition of other minorities and marginalised groups.

Further, the constitution under Article 260 of the Constitution defined a marginalized group as a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds. This is also articulated in Article 27 (4); i.e. 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. In this case women, youth and people living with disabilities are considered marginalized groups in Kenya¹¹.

The Kenya Constitution provides citizens with the right to participate in the decision-making process and further directs the national and sub national legislatures respectively to "facilitate public participation" in their work. Therefore the preparation of the development plans and all the strategies are guided by the Constitution and are required to be participatory by involving all stakeholders. Citizen participation is embedded in the Kenya Constitution 2010 both as a principle and a national value in Article 10. The Article binds State Organs, State officers and public officers to exercise values such as participation whenever they make or implement public policy decisions. As such citizen involvement in the prioritization, planning, ownership and, sustainability of sub national and national development is an imperative. Further, the Constitution in Article 201 (a) requires openness and unlimited accountability. As part of these processes the vulnerable and the poor should be fully and effectively involved in the country's development agenda. Citizen participation is crucial in ensuring the protection of rights, transparency, accountability, equity, self-determination, influencing decision-making, effective democratic citizenship and meaningful dialogue.

2.7 Shared Prosperity

Articles 232 and 100 provide for equality and freedom from discrimination by guaranteeing equal treatment between women and men, including the right to equal opportunities in political, economic, cultural and social spheres. Other articles in the Constitution that address gender equality and the empowerment of women include:

The Constitution under Chapter IV, the Bill of Rights, provides a framework for affirmative action that ensures that minorities and the marginalized are brought up to speed in social economic and cultural development. Affirmative action has been defined as — those actions appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity. Thus to increase representation and political power of the marginalized in Kenya, This is done by creating special electoral units that will increase the representation by marginalized groups especially the

¹⁰ Constitution of Kenya, 2010

¹¹ Ibid

minorities. On the other hand political appointments can be done to fill the gaps where marginalized groups may not get a chance through popular vote¹².

The Constitution of Kenya, under the Bill of Rights, obligates the State to address the needs of the vulnerable persons in the society with emphasis on protection of the marginalized groups in the society among them women and, persons with disability (PWDs). The constitution also created the oversight mechanisms with the objective of acting as watchdog bodies, including in relation to overseeing implementation of the Constitution¹³.

2.8 Corruption

The Constitution stipulates an institutional framework of checks and balances that includes a number of accountability, oversight and review mechanisms that in the medium and long term are intended to 'oversee' implementation and ensure the protection and advancement of the normative content of the text. Good governance, integrity, transparency and accountability are principles of governance provided for in the Constitution of Kenya (2010). Pursuant to Article 80 of Constitution of Kenya 2010 a number of Leadership and Integrity laws have been enacted. This is also reinforced in other legislation such as Public Officer Ethics Act 2013 Ethics and Anti-Corruption Act 2011 that address mechanisms to fight again corruption.

2.9 Devolution

In direct response to powerful and centralised executive, the Constitution introduced a stronger devolved executive and legislature, the main objectives of this being to bring government and services closer to citizens in terms of delivery and accountability. The objects of devolution as provided for in Articles 174 and 175 of the Constitution are the promotion of democracy and accountability in the exercise of power, fostering national unity by recognizing diversity, enhancing people's self-governance, enabling communities manage their own affairs, protecting and promoting interests and rights of minorities and the marginalized and ensuring equitable sharing of resources¹⁴.

Article 204, of the Constitution has established the Equalization Fund 25(which constitutes 0.5 percent of total Government revenue to be shared by marginalized regions. Counties identified to benefit from this fund include Turkana, Mandera, Wajir, Marsabit, Samburu, West Pokot, Tana River, Narok, Kwale, Garissa, Kilifi, Taita-Taveta, Isiolo and Lamu. The Commission for Revenue Allocation has also been consistent in ensuring equitable sharing of national revenue by introducing objective criteria for the horizontal sharing.

2.10 Safety and Security

As part of the bill of rights, the constitution provides citizens with the right not to be 'subjected to any form of violence' or (f) 'treated or punished in a cruel, inhuman or degrading manner'. In addition, the Constitution guarantees a wide range of rights and fundamental freedoms. It recognises a number of general principles that are of importance to gender equality and elimination of violence in the country. Article 29 of the Constitution provides that every person has right to freedom and security of their

¹² Ibid

¹³ Ibid

¹⁴ Ibid

person which includes the right not to be subject to any form of violence from either public or private sources, and any form of torture whether physical or psychological or cruel, inhuman or degrading treatment. Article 44(3) states that ‘a person shall not compel another person to perform, observe or undergo any cultural practice or rite’. Article 53 (d) obligates the State to protect children from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour; and Article 55 (d) provides for the protection of the youth from harmful cultural practices and exploitation¹⁵.

2.1.1 Implementation mechanism

Some of those more relevant for the realisation of women’s rights and follow-up on measures of affirmative action (with greater or lesser degrees of effectiveness in the implementation process) include the Constitution, Implementation, and Oversight Committee (CIOC), the Kenya National Human Rights and Equality Commission (KNHRC), which was restructured pursuant to Art. 59 (4) of the Constitution into three separate commissions the Kenya National Commission on Human Rights (KNCHR), the National Gender and Equality Commission (NGEC) whose mandate is to promote gender equality and freedom from discrimination and the Commission on Administrative Justice(CAJ)

2.0 Implementation Challenges on SDG 5: Achieve gender equality and empower all women and girls in Kenya

3.1 Overview

The implementation of the Constitution of Kenya, 2010 has not been without challenges. The process of implementation involved putting in place numerous pieces of legislation within a set timeframe. While this was done, some legislation did not meet the strict timelines while others fell short and subjected to litigation in courts of law. Even then, different interpretations by Courts slowed implementation. Other legislation that were to be triggered through elections including the two thirds gender principle did not happen in either elective or appointive positions. A number of these challenges also emerged due to a long history of undemocratic governance and impunity. Many of these backlogs were captured in other stakeholder submission before the Universal Peer review Mechanism as well as Voluntary National Reports by CSOs and are expounded upon in this section. Election observation reports also provided a glimpse into the issues undermining realization of the promise of CoK, 2010.

3.2 National Ethos

On realization of non-discrimination, various public appointments do not reflect the true picture of the Nation. There is lack of ethnic balance in various appointments by the Executive arm of Government¹⁶.

3.3 Responsibilities and Rights

Although Kenyans are more aware of their human rights, a lack of accountability for abuses and violations by state agencies remains a major problem. Despite a lot of rhetoric about marginalisation and inequality, the country is still among the most unequal in the world. Socio-economic inequalities,

¹⁵ Constitution of Kenya, 2010

¹⁶ Report of the Office of the United Nations High Commissioner for Human Rights : Human Rights Council Working Group on the Universal Periodic Review Thirty-fifth session 20–31 January 2020 Summary of Stakeholders’ submissions on Kenya

compounded by gender, cultural and geographical discrimination, impede the attainment and protection of human rights. Despite Kenya signing up to international and regional treaties and committing to the equality and protection of human rights, the country still struggles to live up to the requisite standards of guaranteeing human rights¹⁷.

3.4 Ethnic Antagonism and Competition

Although the Constitution of Kenya provides a solid ground for entrenching the principles of equality and inclusion in all spheres of life; ethnicity, patriarchy and negative stereotypes continue to inhibit decision-makers in key institutions¹⁸. As a result, many marginalized communities still do not have embers featuring in various public appointments. This stands in the way to realisation of women's political empowerment.

3.5 Divisive Elections

Political parties have done little towards formulating policies to enhance women, youth and PLWDs participation. Further still, the manners in which the political party's membership and its organs are constituted remain a barrier. Research on political parties demonstrates that political party structures are not accommodative to Women, youth and PLWDs and remain patriarchal in nature. The inability and capacity of women, youth and PLWDs to exercise their political rights is further compounded by their limited access to information about political parties' platforms and political illiteracy that manifests as lack of knowledge and understanding of political party systems and policies. Political parties' constitution, rules, policies and plans of political parties are implemented in a manner that locks out women, youth and PLWDs. For instance in the 2017 election cycle, despite good performance by Women, youth and PLWDs at party primaries, many were subjected to challenges and appeals through internal political party dispute resolution mechanisms as well as the Political Party Dispute Tribunal, resulting on a significant number of Women, youth and PLWDs opting out of political parties. Though multiple mechanisms exist to support and strengthen youth and women's political participation; much is still needed to be done to increase their engagement¹⁹.

3.5.1 Political Party Primaries

The importance of the political party primaries in democratic nomination process cannot be gainsaid. The Constitution and the IEBC Act stipulate that the functions of the Commission include "the regulation of the process by which parties nominate candidates for elections." Article 91 sets out the basic requirements of a political party including respecting the right of all persons to participate in the political process, including minorities and marginalized groups. Before registration, parties must demonstrate that their membership reflects the regional and ethnic diversity, gender balance and representation of minorities and marginalized groups²⁰.

Prospects of succeeding in the party primaries are further limited by the shambolic party primaries. All parties have had a history of nominating fewer women compared to men to contest the different elective positions and with few of the women winning the elections. The parties lacked capacity to conduct successful nominations and where they tried to; they were chaotic and characterized by

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Review Of The Democratic, Electoral And Diplomatic Support Towards and During Kenya's 2017 General Election

²⁰ Constitution of Kenya, 2010

violence and rigging. Political parties sacrificed internal democracy by promoting electoral malpractices such as voter bribery and ethnic driven politics, subverting the basic tenets of inclusion and equality.

Consequently, as noted local and International observers.: ‘Whereas political party selection was assessed as one of the most pivotal factors in the success or failure of women aspirants and candidates’, they noted ‘the low number of women, youths and PLWDs nominated to run for seats in the elections’.

3.5.2. Campaigning Finance

Another barrier that hindered women, youth and PLWDs from exercising their political rights was their inability to finance primary and general election campaigns. As result, during the primaries and general elections, women, youth and PLWDs were overshadowed by other well-endowed campaign teams with seemingly endless resources. This constrained their ability to project visibility and generate interest among voters. This situation was largely in part due to the suspension of the Campaign Financing Regulations that was to give effect to the Elections and Campaign Financing Act 2013 until the 2022 General Elections. This was also against a backdrop where it is known that women and other marginalized groups in Kenya command less economic resources than their able bodied male counterparts.

3.5.3. Electoral System

The Kenyan electoral system -the -First -Past -The- Post, (FPTP) has been unable to deliver gender equality. This is particularly glaring due to burden of winning over the plurality of votes in particular constituency. In a FPTP system, the winning candidate is the one who gets the largest number of votes in an election and the rest of the votes garnered by the other candidates do not count. This system encourages a majoritarian or ‘winner take-all’ mentality.

This system has generally been unfavourable for increasing the participation of women and other marginalised groups in elective leadership especially in patriarchal societies like Kenya. This is because women face barriers that constrain them. These include lack of resources, violence meted to women as candidates and cultural beliefs that undermine women leadership with pastoral communities opting for what they call negotiated democracy that totally locked out women in competitive elective positions.

Proportional representation system The PR system has also been used in Kenya since independence. Although the true essence of PR is that every vote counts and everyone should have the right to fair representation, the system has not fully achieved these goals in Kenya because the reserved seats are allocated to parties based on the number or the proportion of elective seats won, rather than the number of votes received only 12 PR seats were reserved between 1963 and 2013.²⁴ These were too few to make a difference and increase the number of women representation²¹.

FTPT and PR systems have been ineffective in enhancing women’s political representation in Kenya. In the 2013 elections, just one of the eight presidential candidates was a woman; and the number of women candidates for other elective positions was: seven out of 237 for Governor (2.95%); 19 out of 244 for the Senate (7.79%); and, 697 out of 9,603 for the County Assemblies (7.26%). The direct vote resulted in only 84 women elected in county wards zero for Governors and for Senators, and 16 MPs for ordinary constituencies. This situation did not improve during the 2017 election cycle. Out of a registered 131 female candidates only 23 women won single member constituency seats out of a total number of 290 seats (7.9%), an increase of six from the 16 elected in 2013²².

²¹ Equality and Inclusion Barometer, July 2017

²² Ibid

According to reports the in 2017 two main political outfits – Jubilee and the National Super Alliance (NASA) – nominated 134 female parliamentary aspirants against 1,427 men, representing less than 10 per cent of the total parliamentary aspirants. A total of 12,748 individuals were also nominated for election as Member of the County Assembly (MCA). Besides, out of 299 candidates for the position of County Women member of national assembly, only 0.7% was persons with disabilities while of the 1892, candidates as members of the national assembly only 0.7%, (2) are persons with disability. Similarly out of 11857 candidates as members of the County assembly, 0.2% is persons with disabilities. In a country with youth bulge only 31.66 (3,754) percent of candidates were youth²³.

Table 1: Percentage of female and youth candidates for 2017 General Election desegregated by gender and age

Registered Candidates for 2017 General Elections							
Position	Nominated	Male	Female	Above 35	Below 35	Percentage Female	Percentage Youth
President	8	8	0	8	0	0	0
Governor	211	202	9	202	9	4.27	4.27
Senator	256	236	20	215	41	7.81	16.02
CWMNA	299	1	298	255	44	99.67	14.72
MNA	1892	1761	131	1548	344	6.92	18.18
MCA	11857	10957	900	8103	3754	7.59	31.66
Total	14523	13165	1358	10331	4192	9.35	28.86

Data source: Adapted from Equality and Inclusion Barometer, July 2017

Comparative Analysis of 2013 and 2017 Independent candidates

3. 5.5 Political Party Nominations List and special seats

To ensure women representation, the Constitution provides for Kenya adopted PR using party lists for the parliamentary elections and parties were obligated to provide lists that included alternates between male and female candidates with the exception of the women-only nominated list for the Senate nominated seats. The IEBC is required by law to immediately publish all the lists received from political parties and facilitate dispute resolution within the 10 days provided by law. In the Senate, political parties have to nominate 16 women including one woman representing the youth and another one representing persons with disabilities. While in the National Assembly, there 12 seats filled through party lists to “represent special interests, including the youth, persons with disabilities and workers”, pursuant to Articles 97, 98 of the Constitution. Similar considerations are purposed for the county assembly, specifically article 177 (1) (b) and (c).

Thus in 2013, the Senate ended up having 18 women filling the 18 (26.8%) reserved seats under the Constitution. In the national Assembly, each of the three big parties got three of the 12 seats while others got one of the 12 seats. In the County assemblies, there were not enough women (84) who were elected as County representatives so a gender top up of 600 women were elected across the 1450 County Wards to ensure the assemblies were fully compliant with two - thirds gender rule. Noteworthy, during the 2013 general elections, political parties did not submit their lists on time. In particular, Women, youth and PLVDs were influenced to drop their ambitions with the empty promise that they would be included in the Party Lists resulting to surmountable complaints.

²³ Ibid

In the post 2010 Nominations to elective bodies such as county assembly, national assembly and senate for women, has come to be associated by the ugly tag of “flower girls” and “girlfriends”. While the introduction of CWR seats resulted in constituency seats being perceived as ‘men’s seats’. Such perceptions have impacted negatively when women aspirants seek to challenge men during general election campaigns, and especially in party primaries. Therefore women candidates may need to spend more resources than their male counterparts to overcome prejudice and deep-rooted hostility against women as political leaders²⁴.

3. 5.6 Independent candidates

The Constitution of Kenya under Article 85 provides for the participation of independent candidates²⁵. Arising out of this provision, only four out of 416 MPs (less than 1 per cent) in Kenya were elected as independents in the 2013 election. The four independents were male. In the 2017 elections there were approximately 4000 candidates seeking to be elected for various positions, of which women, youth and PLWD constitute a negligible number of the candidates. Out of the 510 independent candidates for national assembly seat only 5% were female and there were no female independent candidate for the position of president and governor respectively²⁶. Majority of the special interest groups are candidates as members of the county women members of the national assembly and as members of the County assembly. Consequently, among women, youth and PLWDS, only one independent, in this case a woman was elected as member of the national assembly out of the 290.

Table 2: Percentage of Independent candidates for 2017 General Election desegregated by gender

Position	Independent	Female	% Female
President	3	0	0
Governor	47	0	0
Senator	46	4	8.7
CWMNA	55	55	100
MNA	510	23	5
MCA	2,981	154	5

Data source: Adapted from Equality and Inclusion Barometer, July 2017

3.6 Inclusivity

Despite legal provisions prescribing the inclusion of marginalized communities in politics and governance, the reality is that these communities remained under-represented. Relevant constitutional and legislative provisions prescribing that persons with disabilities have reasonable access to information, the use of sign language, braille and other appropriate means of communication, access to assistive devices for all types of disabilities, amongst other requirements, have not been fully implemented.

²⁴ Equality and Inclusion Barometer, July 2017

²⁵ Constitution of Kenya, 2010

²⁶ Equality and Inclusion Barometer, July 2017

3.7 Shared Prosperity

Although some actions have been taken to promote gender equality, legislative and policy frameworks have been hampered by sluggish implementation and a lack of gender responsive budgeting. As a result, Kenya has continued to experience the existence of gender inequalities with regard to access and control of resources, economic opportunities, political as well as power.

3.8 Corruption

Equality rights as they relate to the universal human rights conceptions are in themselves difficult to enforce especially in conditions of corruption. Despite efforts to strengthen anti-corruption measures, corruption continued and there is a general lack of enthusiasm to protect whistle blowers. The move to de-monetize the 1000 currency note has yet to bear tangible results. Kenya established the Multi-Agency Team (MAT) to enhance coordination and collaboration in the fight against corruption. However, the team has been blamed for a slowing down of economic activities in the retail and wholesale electronics sector in major urban centres.

3.9 Devolution

The adoption of devolved system of government in Kenya was a desire of citizens who wanted better access to public services. To achieve these, a framework under article 174 and 175 was put in place to provide an enabling environment to all stakeholders involved in the implementation of devolution. However, the environment for implementation of devolution has not been smooth due to various challenges experienced for the past ten years. Some of the issues have been contributed are intergovernmental, involving both levels of government and intra governmental, involving the County Executive and County Assembly. Disagreements between the National Government and County Governments have centred on execution of functions, funding for County functions and lack of consultation on matters that affect County Governments. The disagreements between County Executives and County Assembly have been driven by budgetary allocation, lack of accountability and transparency and lack of consultation. Additionally, it is obvious that most county government lack a robust citizen oversight mechanism. Also, the sharing of Equalization Fund has not been usefully utilized to meet the intended purpose. The recent attempt by members of the National Assembly to control management of equalization fund has also been viewed as having the potential to defeat its noble objective.

3.10 Safety Security

High level of tolerance of Gender Based Violence in some communities, persist as social -cultural norms on GBV thus significantly impairing prevention of GBV Gender based violence. The vice has deleterious impacts on the life of the survivors, with some of the consequences being lifelong. GBV ranks among the most prevalence forms of violations of human rights in Kenya²⁷. The National Crime Research Centre (2014) indicates that it is a rampant vice that does not respect any economic, social, or cultural boundaries. It takes place in virtually all spheres of life, affecting all individuals irrespective of age and sex, and it can manifest directly or indirectly. However, women and girls are the most affected victims of GBV in the county. Based on the Kenya Health and Demographic Survey (2014) GBV is perpetrated by a wide spectrum of agents with some being the immediate members of the family, while others are actually law enforcers and individuals in influential social, economic, and political position. Cases of

²⁷ Voluntary National Review (Vnr) Of Progress On Sustainable Development Goals (SDGs) In Kenya: Submissions By Civil Society Organizations To The Government Of Kenya Towards Voluntary National Review Report

violence, intimidation and hooliganism associated with political parties dissuade many Women, youth and PLWDs from voting.

Harmful and prohibitive socio-cultural traditional practices and beliefs such as female genital mutilation/cutting (FGM/C) by some communities' continue in defiance of the Constitution. HTP linked to traditional notions of women and girls roles in society, coupled with myths and misconceptions of rape and sexual assault are still commonplace in many areas of Kenya. Focus on survivor centric approaches and perpetrator apprehension has not produced the desired effects of eradicating these harmful traditional practices.

3.11 Judicial Decisions

A number of individuals and organisations instituted cases on equality and inclusion before the courts. The litigations were intended to obtain judicial decrees that could advance equality and inclusion of women, youths and PLWD's in the governance space. These initiatives included litigation such as The Gender Representation Supreme Court Advisory Opinion⁶ (on whether Article 27 (8) was immediately realisable), FIDA Kenya & Others Vs Attorney General and another⁷ (challenging the gender composition of the Supreme Court), National Gender and Equality Commission (NGEC) Vs IEBC⁸ (challenging the exclusion of women, youth and persons with disabilities from party lists under Article 90 of the Constitution), CREAM Vs Attorney General & Another (seeking publication of a Bill to give effect to Article 100)⁹ and Katiba Institute Vs IEBC¹⁰ (ruled that political parties are bound by the gender requirement in the Constitution)²⁸.

It is in this context that the Supreme Court issued an Advisory Opinion No. 2 of 2012 to the Executive and the Parliament that the realization/attainment of the two-thirds gender rule would be progressive and dependent on the State's further action. Further, the court was of the opinion that public elective bodies are not confined to the National Assembly, Senate or County Government but to all public bodies in Kenya that hold some form of elections. Therefore, in its conclusion, the Supreme Court stated that article 81 (b) could not be attained immediately. The Supreme Court also stated that the rights under article 27 (6) and (8) could only be fully realized using legislative as well as other measures and over a spaced period of time by means of policy and other measures. The Supreme Court further advised that a framework giving effect to the two-thirds gender principle should be in place by 27th August 2015 which never materialized²⁹.

Another key precedence emanating from the Courts was in Petition no. 1 of 2019, National Gender & Equality Commission (NGEC) v Majority Leader, County Assembly of Nakuru & four others. The NGEC successfully challenged the decision of the Nakuru County Assembly to de-whip nominated members of the assembly as chairpersons and vice-chairpersons in different committees in the house. The decision had the overall effect of undermining the constitutional principle and spirit of gender equality. Some of the re-constituted Committees did not comply with the constitutional two-thirds gender rule

The advisory of the current Chief Justice (CJ) David Maraga, to issue a dissolution notice arising from six petitions of the same nature, reinforces the challenges in implementing the constitution. The rationale behind this advisory was the parliament's failure to implement the 2/3 gender parity law, as provided for in Article 10 (2), Article 27(6), 27(8); Article 81(b) and Article 100 of the Constitution of Kenya 2010³⁰. Thus, the advisory came about following the lapse of the five-year grace period as dictated

²⁸ Kenyalaw.org

²⁹ Ibid

³⁰ See Kenya Judiciary Website: Chief justice's Advisory to the President on Article 261 (7) of the Counstitution

in Schedule 5 of the Constitution of Kenya for implementation of the law. In a memorandum to the office of the president, the CJ directed the dissolution of the 12th Parliament.

Pointedly, the advisory was received with indifference among male Member of Parliament. Indeed the often touted solution to the crisis was to delete Article 10 (2), Article 27(6), 27(8); Article 81(b) and Article 100 of the Constitution of Kenya 2010.

3.12 Implementation mechanisms

The Kenya National Human Rights Commission, National Gender and Equality Commission as well as the Commission on Administrative Justice have had to operate within the ever shrinking governmental resources. Apart from that, the KNHRC seems to have slowed down on advocacy even as the country experienced considerable shrinking of the civic and human rights space.

4.0 BBI taskforce proposals on SDG 5: Achieve gender equality and empower all women and girls in Kenya

4.1 Overview

The BBI taskforce recommendation will have significant impact on the Constitution of Kenya 2010 and Vision 2030 and to a large extent the Agenda 2030 SDGs. In particular, the implementation of the BBI will influence SDG 5 Achieve gender equality and empower all women and girls. This section therefore identifies some of the proposals pertinent to SDG 5.

4.2 Rights and Responsibilities

In sum, the BBI taskforce proposes enabling institutional architecture for the realisation and protection of women's, youth and PLWD and gender equality principles. It reaffirms the Bill of Rights that contains specific gains in relation to rights of women youth and PLWDs and goes further to expand it by including protection of personal data. There is also a proposal to have a patient's bill of rights³¹. In particular, the BBI taskforce calls for the entrenchment of article 43 on social and economic rights in government policy. To tackle past human rights excesses, the BBI suggest some form of compensation for victims of past human rights violations. BBI taskforce proposes the Charter of Citizen Responsibilities which includes clause (d) *fulfil parental responsibilities towards their children*³².

Although the text of the BBI taskforce seeks to strengthen and advance human rights especially women, youth and PLWD rights, it fails the test of consistency. Many of the proposals relating to curing inequality and discrimination in employment are tasked to public and government sector only while not explicitly tasking private sector. Furthermore, the utility of charter of citizenship responsibilities is lost especially when compared against article 10, which more clearly lays out concrete values necessary for a system of governance to achieve the political vision set out in the constitution.

4.3 Divisive elections.

The BBI taskforce posits that the existing first-past-the-post (FPTP) system is a leading cause of the highly divisive elections, which also produced an unfavourable proportional representation system. As it is currently, the CoK, 2010 provides for a National Assembly consisting of 290 elected members from single constituencies, 47 County Women Representatives and 12 specially selected members representing special interest groups thus totalling to 349 elected members. As a remedy the BBI taskforce proposes current proportional representation and special seats in the national assembly be replaced by a mixed member proportional representation (MMPR) system while taking into account the two-thirds gender rule and the Constitutional requirement. As a result, the composition of parliament will include 290 members from single constituencies elected through FPTP and 70 members elected through MMPR, thus in total Parliament will have 360 elected members. Additionally, there is suggested a provision to have Cabinet ministers selected from outside of the national assembly who will be ex-official members. In terms of political parties, the BBI taskforce recommends dispute resolution mechanism with defined membership. It also mentions the need to devolve political parties to have

³¹ Building Bridges initiative to National unity report, October 2020

³² Ibid

county based branches. The BBI taskforce also recommends a defined elections timetable spanning for 18 months³³.

Although the overall picture is encouraging, the introduction of a MMPR system at face value does not seem to cure the two third representation of either gender in the National Assembly. Thus BBI recommendations may undermine the inclusion of persons with disabilities, thereby degrading the institutional arrangements through which persons with disabilities exercise elected representation. Additionally the MMPR system may create a new set of challenges especially given that political parties are expected to implement through party lists while there structures remain unreformed and patriarchal. Further, the proviso for selection of ex-officio members is not specific on whether selection should be in conformity to the two third gender rule. The BBI taskforce in tackling the electoral system does not address the issue of independent candidates as provided for under article. As currently proposed, the election system requires unpacking to enable citizens understand it better. While the overall picture is encouraging, the introduction of a MMPR system at face value does not seem to advance the principle of at least one third representation of either gender in the National Assembly.

4.4 Inclusivity

The BBI taskforce recognized that women have not achieved the promises contained in the Constitution of Kenya 2010. As a remedy the BBI proposes a raft of recommendations to cure some of the issues promoting inequality and exclusivity in representation. The BBI taskforce contains proposals for achieving gender parity in the Senate by way of introducing 47 seats for women that will bring parity between men and women. In the National Assembly, the taskforce recommends abolishing the replacement of the proportional system with a MMPR to achieve two-thirds gender rule constitutional requirement. Similarly, the County top leadership is henceforth expected to comprise of either gender in its top leadership. The BBI taskforce contains proposals for achieving gender parity in the senate. 47 seats have been introduced in the senate which in addition to the existing seats will bring parity between men and women. Similarly, the County top leadership is henceforth expected to comprise of either gender in its top leadership³⁴.

The BBI also proposes a youth commission to promote the implementation of the rights of the youth under Article 55. Under administrative reforms on inclusivity, the BBI taskforce suggests that the economically vulnerable be given a voice in decision making. BBI taskforce administrative reforms on inclusivity suggest policies to guide county recruitment that includes affirmative action for minorities. The BBI taskforce proposes even more affirmative action measures to compensate for historical inequality and discrimination.

However, while the overall picture is encouraging, the introduction of a MMPR system does not seem to cure the two third representation of either gender in the National Assembly. The inconsistency in creating gender parity is also evident in positions within the National Executive identified as President, Deputy President, Prime Minister, and Two Deputy prime ministers including Cabinet Ministers. This is further evident when examined from the perspective of parliamentary and senate house and departmental committees leadership positions. Then there is also the loss of County Women

³³ Ibid

³⁴ Ibid

Representative (CWR) seats that will be accompanied with the double loss by women of a seat during decision making on national resources as well as the National government affirmative kitty. The BBI taskforce makes recommendations which undermine the inclusion of persons with disabilities. It removes the seats reserved for persons with disabilities in the National Assembly and the Senate thereby degrading the institutional arrangements through which persons with disabilities exercise representation. Additionally the MMPR system may create a new set of challenges especially given that political parties are expected to implement through party lists while there structures remain unreformed and patriarchal. The BBI taskforce in tackling the electoral system does not address the issue of independent candidates as provided for under article 85 of the Constitution.

4.5 Shared Prosperity.

The BBI taskforce lays emphasis on the constitutional preamble and its values. In relation to matters of Equality and inclusion, suggesting that “Kenyans must embrace legal and political systems that carefully balance between equity and equality”. In sum, the BBI taskforce proposes enabling institutional architecture for the realisation and protection of women’s, youth and PLWD and gender equality principles. It reaffirms the Bill of Rights that contains specific gains in relation to rights of women youth and PLWDs. In particular, the BBI taskforce calls for the entrenchment of article 43 on social and economic rights in government policy. The BBI taskforce proposes even more affirmative action measures to compensate for historical inequality and discrimination In this regard there is a proposal to amend the Higher Education Loans Board Act to allow extensive loan repayment grace periods for university graduates. To tackle past human rights excesses, the BBI suggest some form of reparations for victims of past human rights violations. Additionally, to address economic exclusion, the BBI taskforce suggests amendments to the Micro and Small Enterprises Act, 2012 including a proposed tax holidays for youth entrepreneurs. Entrepreneurship driven development targeting youth is given several mentions under administrative reforms on shared prosperity. Another area given prominence is fairness in employment, under administrative reforms on shared prosperity and inclusivity. This also includes proposals to have employment conferences in all counties³⁵.

Although BBI seeks to strengthen and advance economic wellbeing of especially women, youth and PLWD, in terms of employment and entrepreneurship opportunities; this proposal for shared prosperity will not come to fruition in advancing gender equality measures and principles of access, ownership and control of resources. These proposals fall short by not seeking to make women have control over key factors of production such as land. The framing of shared prosperity proposals and suggestions is targeted at public/government institutions while not tasking private organizations. This is against a backdrop where the private sector is already and will continue to be a major source of employment. Furthermore, the utility of charter of citizenship responsibilities is lost especially when compared against article 10, which more clearly lays out concrete values necessary for a system of governance to achieve the political vision set out in the constitution.

4.6 Devolution.

There also suggestions in the BBI taskforce to create a ward development fund for capital expenditure in the Counties for purposes of Article 43. In terms of resource sharing, the BBI taskforce recommends

³⁵ Ibid

increased allocation to County Governments from at least 15% of last audited accounts to 35% with a 70:30 ratio biased towards development³⁶.

While the increase in resources at the county level is suggested will improve delivery of services and other developments, equally important is to have a robust accountability mechanisms. The ratio 70:30 bias towards development though good will not necessarily respond to the felt gender needs at the County level. While the suggestion for WDF is important, the lack of women, youth and PLWDs in elective positions at the ward level is glaring. The lack of criterion for membership to the WDF implementation mechanisms to advance gender equality measures disregards the gender principles of access control of resources. Therefore, they run the risk of being left out in decision making much in the same way as in NG-CDF whereby the patrons have been mostly male legislators. As such there may be need to ring-fence some of the funds so that they are allocated to sectors that are responsive to women, youth and PLWD immediate needs.

4.7 Safety and Security.

The BBI taskforce citing technological advancement, proposes to amend Chapter Four of the Constitution on the Bill of Rights to provide a constitutional underpinning for privacy of personal data of citizens as an emerging area in human rights Clause 5 of the Bill proposes to amend Article 31 (Privacy) to incorporate the right for the protection of personal data of citizens. There are also the changes to the Elections Offences Act 2016 proposed by the BBI taskforce, to enhance penalties against perpetrators of violence against women during elections. Under administrative reforms to enhance shared prosperity, BBI taskforce calls for prioritizing combatting Gender Based and Sexual violence by focussing and resourcing specific policy & prevention measures. Under administrative measures, there is a proposal to have rites of passage for male and females that conform to the constitution. Another innovation in the BBI taskforce relates to the effecting of a Victim Protection Trust fund, which is give special attention to victims of terrorism.

The proposal on privacy of personal data of citizens will cure some emerging form of cybercrime particularly targeted at women. There will be need to review existing GBV protection frameworks to enhance protection of rights. The proposal to resource gender and sexual violence policy and prevention measures is hollow in the face of limited funds allocated to gender functions at national and county levels. In this regard, some form of capitation needs to be done for the gender function budget line at national and county level. In terms of the Victim Protection Trust, the BBI taskforce needs to address the issues of all violence victims but particularly women and girls post-election and ethnic GBV victims.

³⁶ Ibid

5.0 Recommendations to Strengthen on SDG 5: Achieve gender equality and empower all women and girls in Kenya

Based on the foregoing understanding of issues identified from the BBI taskforce and eager to advance the agenda 2030 goals the review spotted several areas of intervention and opportunities. The overall view is that the BBI does not address all the listed actions under SDG 5. Where opportunities have been identified to advance the agenda 2030 SDG 5 there is need to develop strategic interventions to further existing proposals. These are summarized below as follows;

In line with SDG 5 target (1): Ending all forms of discrimination against all women and girls everywhere (2) Eliminating all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation. And (3) Eliminating all harmful practices, such as child, early and forced marriage and female genital mutilation.

- Call for the expansion of beneficiaries of the victims protection funds to include survivors of post-election and ethnic gender based violence.
- Review all cybercrime and cyber security laws to align and reinforce data protection measures.
- Generate a costing study for prioritizing combatting Gender Based and Sexual violence to advocate for resourcing specific policy & prevention measures.
- Participate in discussions at county level on rites of passage for male and females that conform to the constitution.

In line with SDG 5 target number four, Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.

- Support deliberations, policy and legislative measures towards ensuring shared parental responsibility.

In line with SDG 5 target number five, Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life.

- Support efforts to strengthen political parties' grassroots structures, formulate gender equality statements, gender policies and procedures that will allow adequate and quality political participation of women, Youth and PLWDS.
- Engage with the Political Parties Liason Committee to support to the Office of the registrar of Political parties (ORPP) to ensure enforcement and compliance to the political parties Act and the related amendments related to election nominations and campaign financing
- Galvanize efforts among CSO's and Women leaders to introduce constitutional or legislative measures ring fencing 70 MMR seats for Women, Youth And PLWDS.
- Voice the need for two thirds gender rule to equally apply in the selection and appointment of Cabinet members appointed from outside the national assembly.

In line with SDG 5 target seven undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.

- Support programs aimed at increasing women's earning power and ability to own and control their own income.

In line with SDG 5 target eight: Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women.

- Promote efforts in policy and legislation as well as innovations that enhance greater data protection measures for women and girls

In line with SDG 5 target nine adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

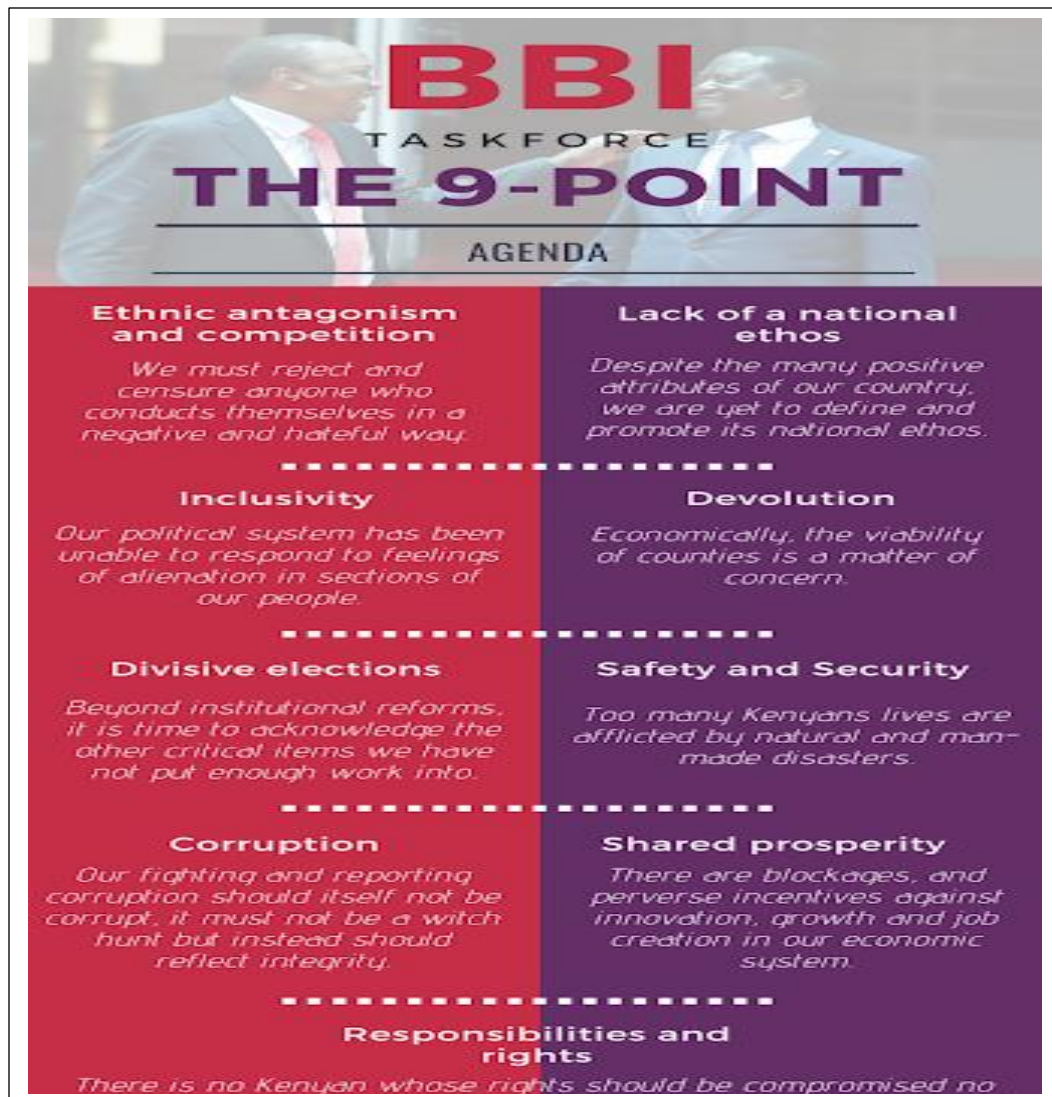
- Mobilize civil society and women rights organization lobby for introduction of statute to ring fencing National Government Affirmative Action Funds.
- Build a civil society accountability mechanisms to ensure spending of devolved funds is tracked are spent on priority issues identified by women, youth and PLWD.
- Sensitize county governments and citizens on gender responsive budgeting and social accountability mechanisms
- Promote realization of SDG 5 at county level by ensuring that 30% of development vote is allocated to gender departments at county level
- Capacity building of ward representatives on applying gender principles to public policy and legislation
- Increase capacity of County based CSO's to engage at the County level on public policy and legislation

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European Union; Elections Observation Mission	EU EOM Final Report, General Elections, 2017	2018
FIDA-Kenya	Guidelines for Gender Mainstreaming in Political Parties	2012
Government of Kenya	Kenya Demographic Health Survey	2014
Government of Kenya	Report of the Steering Committee on the Implementation of Recommendations of the Building Bridges to A United Kenya Taskforce	2020
Government of Kenya	Constitution of Kenya, 2010	2010
Government of Kenya	Vision 2030	2008
Government of Kenya	The Report on the Independent Review of Elections Commission	2008
IEBC	Report of the Independent Audit of the Register of Voters	2017
IDRC/WEL	Young Women's Political Participation In Kenya :A study on the experiences and challenges of young women in political engagement	2013
KNCHR	A Human Rights Monitoring Report On The 2017 Repeat Presidential Elections	2017
NDI & FIDA Kenya	A gender Analysis of the 2017 Kenya General Elections	2018
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Annex I: BBI Nine Point Agenda



Annex 2: COMPARATIVE MATRIX

SDG 5: ACHIEVE GENDER EQUALITY AND EMPOWER ALL WOMEN AND GIRLS

EXISTING CONSTITUTIONAL PROVISIONS

BUILDING BRIDGES INITIATIVE PROPOSALS

1. END ALL FORMS OF DISCRIMINATION AGAINST ALL WOMEN AND GIRLS EVERYWHERE.

Article 2 (6) Enforcement of International Conventions - All Conventions relating to gender based inequality and violence that have been ratified by Kenya

Article 10(2) (b) recognises equality and non-discrimination as national values and principles of governance that bind all state organs, state officers and public officers.

Article 27- Equality and freedom from discrimination

2. ELIMINATE ALL FORMS OF VIOLENCE AGAINST ALL WOMEN AND GIRLS IN THE PUBLIC AND PRIVATE SPHERES, INCLUDING TRAFFICKING AND SEXUAL AND OTHER TYPES OF EXPLOITATION.

Article 29 (c) every person has the right to freedom and security of the person, which includes the right not to be subjected to any form of violence from either public or private sources.

Article 45 of the Kenyan Constitution (2010) the family institution recognizing it as the natural and fundamental unit of society and the necessary basis of social order.

31. Privacy

Every person has the right to privacy, which includes the right not to have—

(d)the privacy of their communications infringed.

Constitutional Amendments

Legislative Measures

Administrative Measures

Rights & Responsibilities

Every one of us must accept our responsibilities if the rights we argue for so strongly are to ultimately be respected for all of us.

Civic education should be prioritised in Government policies and initiatives, both nationally and in Counties.

Inclusivity

Promote equality and equity to generate economic development

Safety and Security

There should be equal distribution of policing resources, prosecution and preventive efforts to make sure each Kenyan life has equal value.

Operationalise the Victim Protection Trust fund, and pay special attention to victims of terrorism.

Prioritise combatting gender based and sexual violence by focusing and resourcing specific policing and prevention measures.

Devolution

Kenyans need a Patients' Bill of Rights to tackle corruption in billing; forceful detention of patients; consequences for misdiagnosis; emergency cases; and polite and considerate service..



3. ELIMINATE ALL HARMFUL PRACTICES, SUCH AS CHILD, EARLY AND FORCED MARRIAGE AND FEMALE GENITAL MUTILATION.

44. Language and culture
- 3), A person shall not compel another person to perform, observe or undergo any cultural practice or rite.
- Article 53 further makes it a right for children to be protected from harmful cultural practices, which may include Female Genital Mutilation and early marriage for the girl child (d)
55. Youth
The State shall take measures, including affirmative action programmes, to ensure that the youth—
- d) are protected from harmful cultural practices and exploitation.

National ethos

There must be a renewed focus among parents and mentors on teaching morality, including sacred truths whose importance stretches beyond the individual.

Corruption

The digitisation process and content should be secured from criminal tampering.

National Ethos

Elders and cultural leaders should commit to strengthening the moral and service ethos passed to the young and include in this a civic component.

County Governments to implement measures that encourage and enable Councils of Elders to formalise rites of passage to include both genders, and to incorporate national values and citizen rights and responsibilities.

Rights & Responsibilities

Every one of us must accept our responsibilities if the rights we argue for so strongly are to ultimately be respected for all of us.

Citizens' rights and responsibilities to be incorporated in the cultural, religious and communal processes of initiation and religious and cultural education.



4. **RECOGNIZE AND VALUE UNPAID CARE AND DOMESTIC WORK THROUGH THE PROVISION OF PUBLIC SERVICES, INFRASTRUCTURE AND SOCIAL PROTECTION POLICIES AND THE PROMOTION OF SHARED RESPONSIBILITY WITHIN THE HOUSEHOLD AND THE FAMILY AS NATIONALLY APPROPRIATE.**

5. **ENSURE WOMEN'S FULL AND EFFECTIVE PARTICIPATION AND EQUAL OPPORTUNITIES FOR LEADERSHIP AT ALL LEVELS OF DECISION MAKING IN POLITICAL, ECONOMIC AND PUBLIC LIFE.**

Articles 10(2)(d), Sustainable Development

Article 27 (6), Article 27 (8) not more than two thirds of the members of any elective or appointive body are of the same gender.

38. Political rights

54. Persons with disabilities

- (2) 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.

55. Youth

The State shall take measures, including affirmative action programmes, to ensure that the youth—

- d) are protected from harmful cultural practices and exploitation.

Article 81(b) reinforces Article 27(8) by stating that not more than two-thirds of the members of elective public bodies shall be of the same gender. Thirdly,

Article 90(2)(b) of the Constitution mandates political parties to ensure that each party list for nominations

Elections Act, 2011 (No. 24 of 2011) amendment bill on voter registration, party primaries and extended campaign period.

Political Parties Act, 2011 (No. 11 of 2011) amendment bill redistributes the Political Parties Fund to promote the Constitutional rights under Article 27 on equality and freedom from discrimination. The Bill further obligates every political party to establish an Internal Dispute Resolution Committee with a defined membership.

National Ethos

Senior national leadership should champion the importance of this national moment for forging a renewed and strengthened national ethos.

Ethnic Antagonism and Competition

Strengthen the Office of the Registrar of Political Parties (ORPP) in monitoring the implementation of the political parties' Code of Conduct and sanctioning where necessary.

Implement Political Parties' Act and Regulations to the letter.

Divisive Elections

Devolve political parties to have strong County-based party branches. These will allow the people to have the political forums and avenues to hold their elected leaders accountable throughout a term

comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed.

Article 91(1)(f) requires that political parties respect and promote human rights and fundamental freedoms, and gender equality and equity. In particular,

97. Membership of the National Assembly

(1) The National Assembly consists of—

- (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;

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

100. Promotion of representation of marginalized groups
Parliament shall enact legislation to promote the representation in Parliament of—

- (a) women;

Article 90 of the Constitution is amended

Article 91(1) of the Constitution is amended

Article 97 of the Constitution is amended—

“(a) three hundred and sixty members, each elected by the registered voters from two hundred and ninety constituencies constituting single and multiple member constituencies.”

Article 98 of the Constitution is amended—

(a) in clause (1) by—

(i) deleting paragraph (a) and substituting therefor the following

new paragraph—

“(b) ninety-four members, being one woman and one

Election Offences Act, 2016 (No. 37 of 2016) amendments prohibits of harassment and use of violence against candidates, during an election period.

County Governments Act, 2012 (No. 17 of 2012) The Bill proposes to amend the County Governments Act which provides for the structure of county governments.

PUBLIC PARTICIPATION
BILL, 2020 proposes to provide a framework for effective public participation including the introduction of the Registrar of the Public Participation Registry under the Office of the Attorney General. Bill provides for the role of the County Attorney in the public participation process in the county government and requires reports on any such exercise to be regularly shared and archived with the Registrar.

and not just during elections.

The composition of the Commission must reflect the Face of Kenya at all levels.

Reform the present electoral system to ensure it is simple, accurate, verifiable, secure, accountable and transparent, as mandated by Article 86 of the Constitution.

Inclusivity

Political inclusion to guarantee equality of representation; every vote should have equal power at the ballot box.

Make public participation more prominent in public decision making.

Implement 2/3rd gender rule at all levels to incorporate more women in decision making.

The economically vulnerable to be given a voice in decision making.

Strictly implement and enforce the Constitution and electoral laws and regulations on political, economic and cultural aspects.

Devolution

Perhaps there is a way that the 47 Counties can be maintained as the focus of development implementation and the

- (b) persons with disabilities;
- (c) youth;
- (d) ethnic and other minorities; and
- (e) Marginalised communities.

177 A county assembly consists of—

- (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;
- (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and

County assembly gender balance and diversity

- (1) Not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender.
- (2) Parliament shall enact legislation to—
 - (a) ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee; and
 - (b) prescribe mechanisms to protect minorities within counties

203. Equitable share and other financial laws

- (1) The following criteria shall be taken into account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county government enacted in terms of this Chapter—

- (h) the need for affirmative action in respect of disadvantaged areas and groups;

250. Composition, appointment and terms of office

- (11) The chairperson and vice-chairperson of a commission shall not be of the same gender.

man

from each county, elected by the registered voters of the

counties.”

- (ii) deleting paragraph (b);

Article 177 of the Constitution is amended—

- (a) in clause (2) by deleting the words “be nominated by political parties in proportion to the seats received” and substituting therefor the words “be elected through the party list by political parties in proportion to the votes received”;

provision of services, while representation and legislation are undertaken in larger regional blocs.

Kenyans need a Patients’ Bill of Rights to tackle corruption in billing; forceful detention of patients; consequences for misdiagnosis; emergency cases; and polite and considerate service.



59- Equality Commission Chapter

Article 180 of the Constitution is amended by inserting the following new clause immediately after clause (5)— “5A. In making the nomination under clause (5), a candidate for election as a county governor shall consider a person of the opposite gender.”

6. ENSURE UNIVERSAL ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH AND REPRODUCTIVE RIGHTS AS AGREED IN ACCORDANCE WITH THE PROGRAMME OF ACTION OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT AND THE BEIJING PLATFORM FOR ACTION AND THE OUTCOME DOCUMENTS OF

43. Economic and social rights

- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;



- THEIR REVIEW CONFERENCES.
7. UNDERTAKE REFORMS TO GIVE WOMEN EQUAL RIGHTS TO ECONOMIC RESOURCES, AS WELL AS ACCESS TO OWNERSHIP AND CONTROL OVER LAND AND OTHER FORMS OF PROPERTY, FINANCIAL SERVICES, INHERITANCE AND NATURAL RESOURCES, IN ACCORDANCE WITH NATIONAL LAWS.
8. ENHANCE THE USE OF ENABLING TECHNOLOGY, IN PARTICULAR INFORMATION AND COMMUNICATIONS TECHNOLOGY, TO PROMOTE THE EMPOWERMENT OF WOMEN.
9. ADOPT AND STRENGTHEN SOUND POLICIES AND ENFORCEABLE LEGISLATION FOR THE PROMOTION OF GENDER EQUALITY

Article 40- Right to property

Article 45 provides that all parties to a marriage are equal and therefore entitled to equal rights before, during and at the dissolution of marriage.

Article 60(f) provides that among the principles of land policy is the elimination of gender discrimination in law, customs and practices related to land and property in land.

Shared Prosperity

Focus on use of low/appropriate technology, labour-intensive industrialisation; entrepreneurship-led industrialisation.

Promote cottage industries, manufacturing and labour-intensive industries/sectors (agriculture, livestock and fishing); gradually adopt technologies that increase productivity.

Articles specifically to address gender equality and empowerment of women and girls. These include; Articles 27, 45, 59, 81, 97, 98, 100, 177, and 232.

55. Youth: The State shall take measures, including

44. Article 203 of the Constitution is amended— (a) in clause (1) by inserting the following new paragraphs immediately

PROMPT PAYMENT BILL, 2020 The proposed Bill provides a legal framework for the prompt payment of invoices for goods and

Rights & Responsibilities

Incentivise volunteering stints as part of applying for public service.

Inclusivity

Promote equality and equity to generate



**AND THE
EMPOWERMENT OF
ALL WOMEN AND
GIRLS AT ALL
LEVELS.**

affirmative action programmes, to ensure that the youth—

- (a) access relevant education and training;
- (b) have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;
- (c) access employment;

56. Minorities and marginalised groups

The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—

- (a) participate and are represented in governance and other spheres of life;
- (b) are provided special opportunities in educational and economic fields;
- (c) are provided special opportunities for access to employment;
- (d) develop their cultural values, languages and practices; and
- (e) have reasonable access to water, health services and infrastructure.

203. Equitable share and other financial laws

- (1) The following criteria shall be taken into account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county

after paragraph (k)—

- (m) the need to ensure the attainment of the economic and social rights guaranteed under Article 43; and

- (n) the need to ensure that the average amount of money

allocated per person to a county with the highest allocation does

not exceed three times the average amount per person allocated to a county with the lowest allocation” (b) in clause (2) by deleting the word “fifteen” and substituting therefor the word “thirty-five”.

56. The Constitution is amended by inserting the following new Article immediately after Article 237—
237A. The Youth Commission. (1) There is established the Youth Commission.

The Constitution is amended by inserting

services procured by public entities. The Bill will apply to all public procurement undertaken under the Public Procurement and Asset Disposal Act, 2015.

Higher Education Loans Board Act, 1995 (No. 33 of 1995) The Bill amends the Higher Education Loans Board Act, 1995 which provides for the establishment of a Board of Management of Funds to be used for granting loans to Kenyan students. The amendment seeks to give loanees a grace period of four years from the date of completion of their studies.

MICRO AND SMALL ENTERPRISES (AMENDMENT) BILL, 2020 The Bill seeks to amend the Micro and Small Enterprises Act, 2012. the Bill authorises the Micro and Small Enterprises Authority to establish business incubation centres in Kenya, for purposes of

economic development.

Where there is no candidate, required to attain the Face of Kenya, with the right qualifications, the Public Service Commission and County Governments should be empowered to undertake professional search and development for minority candidates to increase their chances of qualifying for the positions.

Shared Prosperity

Embrace economic coordination (not State ownership) to achieve labour intensive manufacturing export to the East African region. Raise national savings rates beyond 25% of GDP and exponentially grow the number of entrepreneurs while ensuring that the ease of doing business for start-ups and small businesses is dramatically increased.

Hold major employment conferences in every County, with senior representation from relevant National Government actors, to determine the steps in regulation and economic management needed to immediately and sharply raise the number of jobs available to young Kenyans.

Increase employment and livelihoods by making it easier for small businesses to compete and grow at low cost and with

government enacted in terms of this Chapter

(h) the need for affirmative action in respect of disadvantaged areas and groups;

- (2) For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.

the following new Article immediately after Article 207— 207A. Ward Development Fund. (1) There is established a Ward Development Fund for each county. (2) There shall be paid into the Fund in each financial year at least five per cent of all the county government's revenue in each financial year.

nurturing businesses in their early stages, in order to overcome barriers related to early stages of business development. Additionally, the Bill proposes to give youth-owned enterprises a seven-year tax break

minimal constraints.

Develop and launch a national ease of doing business index for small Kenyan businesses rather than relying on foreign indexes that are designed for global comparison. This should be a comparative annual assessment by Kenya National Bureau of Statistics (KNBS) that is disaggregated by geography – Counties, cities and towns – and is publicised.

Aggressively promote planning, critical thinking and innovation from an early age.

Make serious efforts to coordinate, incentivise and drive the growth of the creative industries and sports, among other sectors in which young Kenyans show enormous potential and interest.

To help young people form businesses, open an advice desk in every Huduma Centre manned by a business development expert.

Give all Kenyans equal access to a minimum level of quality education that leads to employment or entrepreneurial opportunity. It is critical that we get rid of the idea that technical work is for those who have failed in academics by creating two equal paths between



academic and technical training.

Devolution
Financing the development of each Ward to at least 30% of the County development budget within the fiveyear term.

The ratio between development spending and recurrent expenditure in the Counties should match the national one at 70:30.