



AUDIT OF THE AUGUST 2022 GENERAL ELECTIONS

from an inclusion
perspective



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LIST OF ACRONYMS

BBI	Building Bridges Initiative
CMD-K	Centre for Multiparty Democracy – Kenya
COK	Constitution of Kenya
ELGIA	Electoral Law and Governance Institute for Africa
IDs	Identity Cards
IEBC	Independent Electoral and Boundaries Commission
IPPG	Inter-Parties Parliamentary Group
KANU	Kenya African National Union
MCA	Member of County Assembly
MNA	Member of National Assembly
MP	Member of Parliament
NA	National Assembly
NGEC	National Gender and Equality Commission
ODM	Orange Democratic Movement
PPF	Political Parties Fund
PWDs	Persons/People With Disability
SEAIP	Strengthening Electoral Accountability and Inclusivity Program
SIGs	Special Interest Groups
UDA	United Democratic Alliance
WDM	Wiper Democratic Movement



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We thank you all.



EXECUTIVE SUMMARY

This study set out to establish the performance of SIGs in the August 9, 2022 general elections from an inclusion perspective. The study is situated in the backdrop of constitutional and legal provisions to support the participation and representation of SIGs in political processes. Specifically the study sought to establish SIGs performance in 2022, the trend from 2013, and the explanatory drivers and constraints to SIGs performance.

Data were obtained from the 2022 general election results relating to the presidency, governorship, senate, national assembly, woman representative and county assembly seats. These were supplemented with views of key informants drawn from political parties, civil society organizations and government institutions.

The results showed relatively poor performance of SIGs compared to non-SIGs; and this poor performance cuts across different election cycles. For example, despite constitutional and legal provision to enhance women representation in politics, the national assembly representation was a single member in 1969 and only 29 members in 2022, that is after a period of five decades.

The factors identified as facilitating the inclusivity of SIGs include; the Representation of Special Interest Group Laws (Amendment) Act, 2019 which provides for enhanced support of SIGs through structured systems of relevant institutions; subsidy of nomination fees in party primaries, and affirmative action through woman representative and nomination seats. The constraints included the so-called negotiated democracy in political parties through which SIG candidates have been made to step down for non-SIG candidates.

The critical recommendations are for political parties to review the so-called negotiated democracy and refrain from asking SIGs to step down in favour of non-SIG candidates; enhanced adoption of the Representation of Special Interest Group Laws (Amendment) Act, 2019 as well as its awareness among relevant stakeholders including IEBC, political parties and NGEC; and for civil society organizations including CMD-Kenya to initiate a nation-wide baseline survey to establish the electability of SIG candidates by different population categories, including by SIGs themselves



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SECTION 1 : Introduction

1.1 Background of the Study

Since the re-introduction of multiparty politics in 1992, Kenya is increasingly emerging as a developing political democracy where citizens exercise political and governance decision-making power through a system of periodic elections. Like in all other emerging democracies, the concept of universal suffrage just like the concept of democracy itself, remain an ideal-type, meaning that it is more of an aspiration than a realization. In Kenya's post-independence, and particularly in multiparty electoral participation and representation, the traditionally excluded population groups have been women, youth, and people with disability (PWD). In this respect, participation, which is indicated by rights of all citizens to express support and vote for preferred candidates to compete for office and to be informed about, and influence public policy, manifests in voter registration, vying, debating, voting, as well as petitioning, and participation in protests and demonstrations among others.

Some of the typical barriers to participation and representation have been legal-institutional (e.g., lack of measures to assist the campaigning and voting of people with visual or mobile disability; the legal requirement for a degree for contestants for gubernatorial seat;

biased media coverage); cultural (e.g., the orientation of politics as a dirty game in which participation especially of women and PWD is undermined by propensity of foul language, labelling or stigmatization, and threats and acts of violence etc.); and situational (e.g., financial incapability, low level of formal education, and political inexperience). Other factors including political party decisions, such as negotiations in which one candidate is impressed upon to step-down for someone else, permeate the institutional, cultural and situational contexts. All these exclusionary tendencies usually affect mostly women, youth, PWD, ethnic minorities, and other marginalized groups.

The August 2022 general election arose in the backdrop of several Constitutional and legislative measures aimed at promoting the participation and representation of SIGs. These primarily include Article 100 of the Constitution of Kenya (CoK) 2010 on promotion of representation of marginalized groups notably women, youth, PWD, ethnic and other minorities, and marginalized communities; and Article 27 on equality and freedom from discrimination based on ethnic or social origin, age, sex, disability, and religion among others. These two Articles, further, give effect to other key laws including the Representation of Special Interest Group Laws



(Amendment) Act, 2019, and the Gender Bill of 2011 (and subsequent Amendments) which provides that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. The Representation of Special Interest Group Laws (Amendment) Act 2019, in particular, provides for:

- a. Enhanced funding of SIGs through assured disbursement from the Political Parties Fund (PPF);
- b. Political parties to allocate funds from PPF to election campaign activities of SIGs through publicity and other measures;
- c. The National Gender and Equality Commission with the function of promoting the sensitization of the public on SIGs' right to participate in the electoral process;
- d. A forum for harnessing political will to support the representation in parliament of SIGs;
- e. Political parties to enhance SIGs representation in elective bodies by ensuring that their nomination lists comply with the provisions of Article 54(2) on 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; and 81(b) which provides that not more than two-thirds of the members of elective public bodies shall be of the same gender.
- f. Independent Electoral and Boundaries Commission (IEBC) to ensure that lists submitted by political parties seeking to participate in a parliamentary election comply with the provisions of article 54(2) and 81(b) of the constitution; and
- g. Enhance the capacity of SIGs to participate in electoral processes.

The legislation on gender affirmative action failed to be passed in three consecutive parliaments; that is, in 2011 during the 10th Parliament, in 2015 and 2016 during the 11th Parliament, and in 2017 during the 12th Parliament. These failures to enact the law eventually led to a Chief Justice's advisory in 2020 for the president to dissolve the Parliament because its composition was considered unconstitutional.

The Constitutional provisions on supporting participation and representation of SIGs also include Article 33 of CoK on freedom of expression, which provides that the right to freedom of expression does not extend to propaganda for war, incitement to violence, hate speech, and advocacy of hatred based on ethnic incitement or any ground of discrimination as specified in Article 27 (see above).

Besides the constitutional provisions, other legislative measures addressing the issues of SIGs include the Political Parties Act, 2011 which provides that political parties must respect minorities and marginalized groups, and must reflect regional and ethnic diversity, as well as gender balance. Further, the Penal Code (Chapter 63 of the Laws of Kenya) prohibits all forms of harm against individuals and their properties.

The 2022 general election was for joint presidency (i.e., President and Deputy President); joint governorship (i.e., Governor and Deputy Governor) in 47 Counties, and single member seat for Senate in 47 counties, single member seat for National Assembly in 290 constituencies, single member seat for Woman Representative to the National Assembly in 47 counties, and single member



seat for County Assembly in 1,450 Wards.

This study was conducted in September 2022, one month after the general election. By this time, only the petition of the presidential result had been litigated and determined. As such the results of this study reflect preliminary results, which may change after any subsequent litigation. The study was also conducted when some Members of Parliament (both Senate and National Assembly) had been appointed to the cabinet. That means the representation of SIGs particularly in Parliament is likely to change.

1.2 The Context

CMD-Kenya is a political parties'-based membership organization established in March 2004. The mandate is to enhance multiparty democracy and strengthen the institutional capacity of political parties in Kenya through policy influence and capacity building. The organization provides a platform for political parties, political actors and policy makers to engage in dialogue and cooperate in strengthening multiparty democracy. CMD-Kenya works closely with political parties, political actors, strategic partners and key stakeholders in promoting social justice, political governance best practices, respect for human rights and fundamental freedoms.

The study was conducted with the financial support from the Electoral Law and Governance Institute for Africa (ELGIA) under the Strengthening Electoral Accountability and Inclusivity Program (SEAIP). The goal of the programme is to promote an inclusive and accountable electoral process in Kenya. Part of the activities under SEAIP sought to prepare political parties to conduct inclusive electoral process before the August 2022

elections, providing a level playing field for political participation of women, youth and persons with disabilities (PWDs).

1.3 Study Objectives

The overall study objective was to examine the extent to which the 2022 general elections were inclusive and to identify factors that facilitated or hindered optimal participation of SIGs in the elections.

The specific objectives were to:



Undertake an audit of the levels of SIGs participation and representation during the 2022 General Elections.



Assess the factors that facilitated or hindered effective participation and representation of SIGs during the August 2022 General Elections.



Evaluate the extent to which the number of SIGs increased or decreased compared to the 2017 General Elections and before.



Make strategic recommendations on how SIGs' participation and representation in political leadership can be improved in future.

1.4 Scope and Limitations

The levels of SIGs participation and representation in the 2022 election was measured by the number of SIG members elected into Presidency, Governorship, Senate, National Assembly and County Assemblies. The performance of SIGs in 2022 general elections was compared to their performance in the last three general elections under the COK 2010 namely, 2013 and 2017.

The drivers for effective participation and representation were indicated by legal provisions and reforms, subsidy of nomination fees in party primaries, affirmative action through woman representative and nomination seats, and spontaneous social and cultural change. On the other hand, constraints were indicated by constitutional and legal impediments,

low youth voter registration and voting apathy, and lack of, or weak, internal democracy in political parties.

The significant limitation for the study was that it preceded election petition outcomes, and by-elections in constituencies whose elected members were nominated for Cabinet positions.

1.5 Theory of change

The study is hinged on the theory of change that election of SIG members into office is dependent on certain politico-legal, cultural, socio-economic and other situational factors such as civility in political campaigns all which can be managed to achieve greater participation and representation of SIGs. Ultimately, this leads to greater socioeconomic development of the country and greater individual happiness.



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SECTION 2 : Methodology

The study was conducted primarily through desk review of documentation that carries information on SIGs' participation and representation in elections spanning from 2013 through 2017, to 2022, and across all seats from Presidency (including Deputy President, to Governor (including Deputy Governor), Senate, National Assembly including the Woman Representative, to County Assembly. The National Assembly data, however, starts form 2007. The secondary data were supplemented with views of key informants who were drawn from the memberships of political parties; civil society, and state institutions.



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SECTION 3 : Key Findings

3.1 Levels of SIGs' Participation and Representation in 2022 General Elections

The 2022 general election was marked by a fairly significant representation and participation of SIGs. At the Presidential level, there were four teams vying for the seat, of which all had the male gender as the principal contender; and quite significantly there was a female running mate in three (3) teams. Although the Kenya Kwanza/UDA all-male team was the eventual winner with 50.5% of the vote, the Azimio La Umoja One Kenya, which fielded Martha Karua as running mate, represented a significant challenge by garnering 48.8% of the vote.

In Article 146 (2a and b), the CoK 2010 provides that in the event of a vacancy in the office of the President, the Deputy shall assume office for the remainder of the term. In that respect, the general acceptance of the female running mates demonstrates a changing acceptability of a woman occupying the Presidency at the political party and the general community levels

The Deputy Presidency, especially in Roots and Agano political parties also attracted youthful candidates. Further, the PWD were represented in the bid for the presidency by the visual impaired, Reuben Kigame, although he did not make it to the ballot.

POSITION	GENERAL		YOUTH (35 AND BELOW)		PWD	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
President	1	-	-	-	-	-
Deputy President	1	-	-	-	-	-
Governor	40 (85.1)	7 (14.9)	2 (4.2)	-	-	-
Deputy Governor	39 (83.0)	8 (17.0)	-	-	-	-
Senator	44 (93.6)	3 (6.4)	3 (6.3)	-	-	-



Member of National Assembly	261 (90.0)	29 (10.0)	3 (1.0)	-	2 ^a	-
Woman Representative	N/A	47 (100)	-	1 (2.0)		1 ^a
Member of County Assembly	1350 (93.1)	100 (6.9)	10 ^b	-	2 ^a	-

Notes:

1. ^a Figures in parentheses are percentages;
2. ^a Figure represent the frequency. The ideal percentage that of the constituencies that elected a PWD out of all constituencies that had a PWD contestant.
3. ^a According to NGEK 2022 election analysis report.

Table 1: Representation of special interest groups in all (6) elective positions in 2022

The Governor’s seat is fairly new given that the 2022 general election was the third time in which the seat was contested. Women demonstrated significant progress by winning seven (7) seats representing 14.9% of the Counties. The distribution of the seven Counties by former provinces was fairly representative of the country, and was also fairly of the political parties’ landscape. In this regard, former Eastern province had three Governors (Machakos, Meru and Embu Counties), while one Governor was elected in each of Coast (Kwale), Central (Kirinyaga), Rift-Valley (Nakuru) and Nyanza (Homa Bay) former provinces. However, there was no female Governor elected in the single County of Nairobi, as well as in North Eastern and Western former provinces. Across political parties, UDA had four female Governors, each of ODM and WDM had one female Governor, while one was elected as an independent candidate.

In terms of age, Governors aged 35 and below were elected in only two Counties (Nandi and Elgeyo Marakwet). There were, however, other youthful (i.e., around 40 years of age)

Governors elected in the cosmopolitan Nairobi (i.e., Johnson Sakaja aged 37 years) and in Kisii County (i.e., Simba Arati aged 40 years). It is imperative to note that as provided in the County Governments Act 2012, the Governor’s seat carries executive mandate whose qualifications are consistent with advancing age; hence, youth’s poor performance in governorship does not necessarily reflect a structured social or cultural bias. Such roles include constituting and assigning duties to County Executive Committee; assenting to County Assembly Bills, and being accountable for the management and use of County resources.

There were three (6.4%) women elected to Senate. In the election there were 26 Counties with women contestants; hence, translating to a success rate of 11.5%. Overall, there were 43 women contesting for the Senate seat. The current three female Senators represent Machakos, Isiolo and Nakuru Counties in former Eastern, North Eastern and Rift Valley provinces. Women’s performance in the election can be termed as poor given that women constitute about 50% of the voters. With respect to age,

available information show that there were three (3) elected Senators from Nyandarua (John Methu), Nandi (Kiprotich Cherargey) and Migori (Eddy Oketch).

In the National Assembly, only 29 out of 290 constituencies (10.0%) were elected out of the 152 constituencies with women candidates. Overall, there were 225 women candidates for the National Assembly seat. As is the case with Senate, the data reflect relatively poor performance for women not only because they constitute about 50% of the voters but also because the National Assembly seat has been available for women since the 1st Parliament in 1969, and also there has been many legal and constitutional attempts (e.g., the 1997 Inter-Parties Parliamentary Group – IPPG; CoK 2010, Gender Rule and Building Bridges Initiative – BBI) to empower women in politics.

In the National Assembly there were three elected youth MPs from Oljororok (Mwangi Muchiri), Saboti (Caleb Amisi) and Mumias East (Peter Salasya). There were also two elected PWDs to the National Assembly (Tim Wanyonyi of Westlands and Martin Wanyonyi of Webuye East).

In the affirmative action seat to the National Assembly (woman representative), there was only one youth (i.e., 24 years old Linet Toto of Bomet) and one PWD (Rose Museo of Makueni).

3.2 Trend of SIGs' Participation and Representation, 2013 -2022

The 2022 Presidential election did not have a female contender, but had three running mates. While previously there has been significant female presidential contenders notably, Martha Karua in 2013; and Charity Ngilu and Wangari

Maathai in 1997, the nomination of Presidential women running mates in three (3) out of the four (4) teams in the context of the 2010 CoK that provides for automatic promotion of Deputy President to Presidency in event of a vacancy, demonstrates a significant paradigm shift and a trend towards greater acceptance of women for the highest office in the land.

With respect to age, there is a notable acceptance of youthful Presidents, especially with the election of Uhuru Kenya at 52 years in 2013 (and Deputy President, William Ruto aged 46 years), and of William Ruto at 55 years in 2022 (and Deputy President Rigathi Gachugua aged 57 years).

However, there is still a significant exclusion of ethnic minorities and marginalized communities for the Presidency. As well, it is instructive that the two dominant Presidential teams were seeking a running mate from the numerically dominant Mt Kenya communities of the Kikuyu, Embu and Meru, which was an ethnic-idiosyncratic rather than a purely meritocratic consideration. In this respect, it is still difficult to expect the representation of minority ethnic groups in the national political seat of Presidency.

In the Governors' seat, there has been remarkable change in women election, from none in 2013, to three (6.3%) in 2017, and seven (14.9%) in 2022 (see Figure 1). The female Deputy Governors also increased from none in 2013, to seven in 2017, and eight in 2022. With respect to age, there was one (1) youth elected to Governor seat in 2017 (IEBC, 2020 report), and two (2) in 2022.



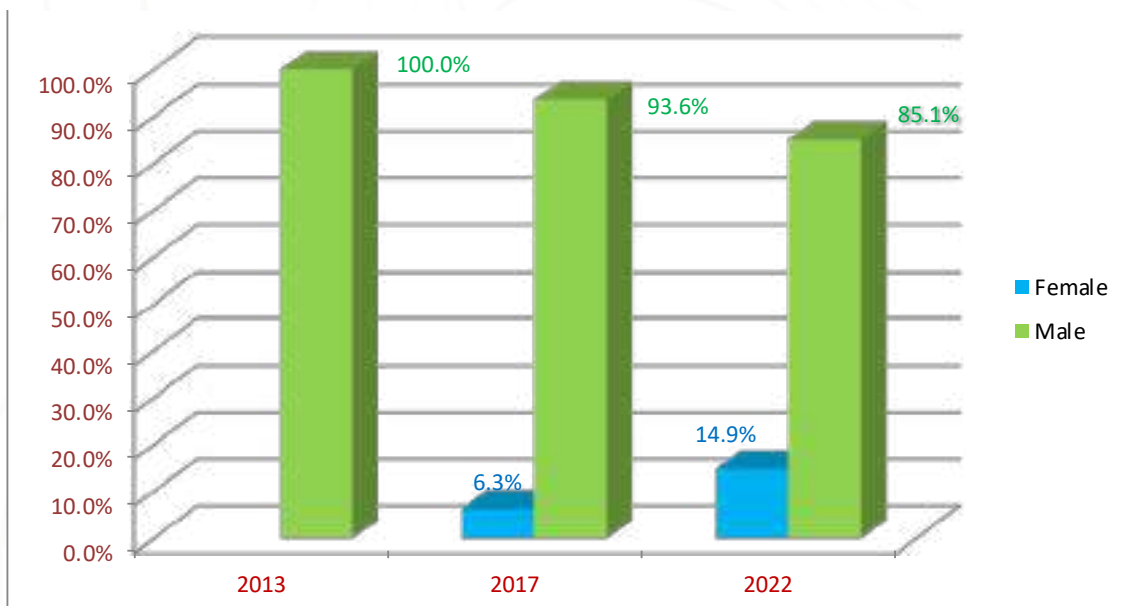


Figure 1: Percentage Representation of Governors by Gender, 2013 -2022

In the Senate, the number of women elected representatives increased from none in 2013, to three (6.4%) in 2017 and remained the same (6.4%) in 2022.

With respect to age, youth (35 and below) Senators were six (12.7%) in 2013, and dropped to three (6.4%) in 2022. In this transition, it is notable that some youth Senators elected in 2017 (notably, Johnson Sakaja of Nairobi, and Stephen Sang of Nandi) moved to become Governors in 2022.

In the National Assembly, women representation

started at only one member out of 158 seats (0.6%) in 1969, increased to 4 (2.5%) in 1974, and to 5 (3.1%) in 1979 but decreased to 2 (1.2%) in each of 1983 and 1988. In the 1992 multiparty election, the number of women representatives increased to 6 out of 188 (3.2%) but decreased to 4 out of 210 (1.9%) in 1997.

The number increased to 9 out of 210 (4.3%) in 2002, to 15 out of 210 (7.1%) in 2007, to 16 out of 290 (5.5%) in 2013, to 23 out of 290 (7.9%) in 2017, and to 29 out of 290 (10.0%) in 2022 (see Figure 2).

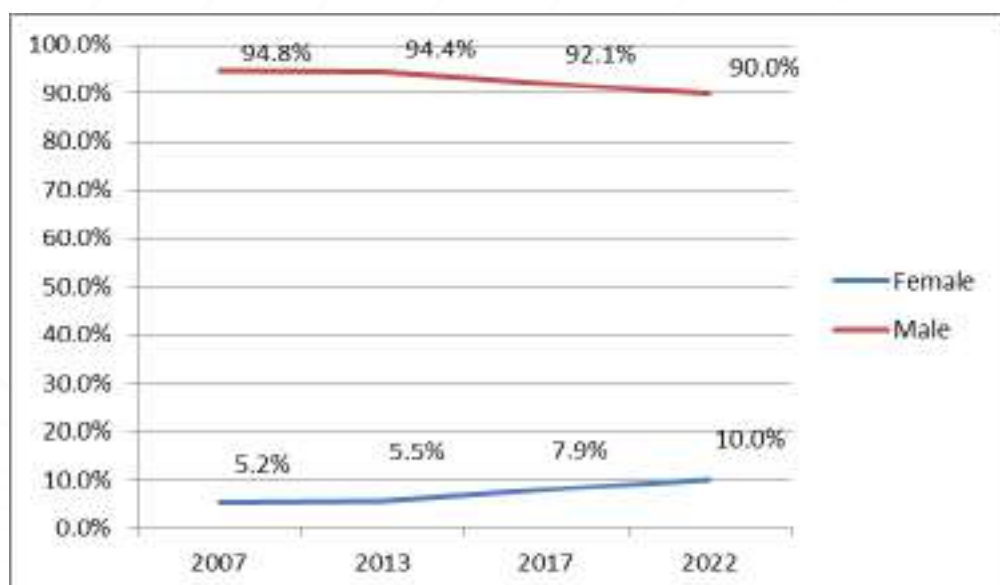


Figure 2: Percentage Representation of Members of National Assembly by Gender

This trend reflects only a gradual but slow progress, which hitherto is not inspiring given the various legal initiatives to enhance representation in elective positions. The relatively poor performance may, therefore, be explained as a cultural bias that cuts across both voters and political parties.

With respect to age, the number of youth MPs drastically reduced from 17 (5.8%) in 2017 (IEBC Report, 2020) to three (3) (1%) in 2022 (NGEC, 2022). With respect to PWDs, their representation also reduced from six (6) in

2017 to two in 2022. However, there were no comparative data available for 2013. Also, there were no data available on the overall number of PWD contestants for 2013, 2017 and 2022; hence; it is not possible to establish the number of succeeding PWDs out of all PWD contestants.

In the County Assemblies, women representation increased from 82 (5.7%) in 2013, to 97 (6.7%) in 2017, and to 100 (6.9%) in 2022 (see Figure 3).

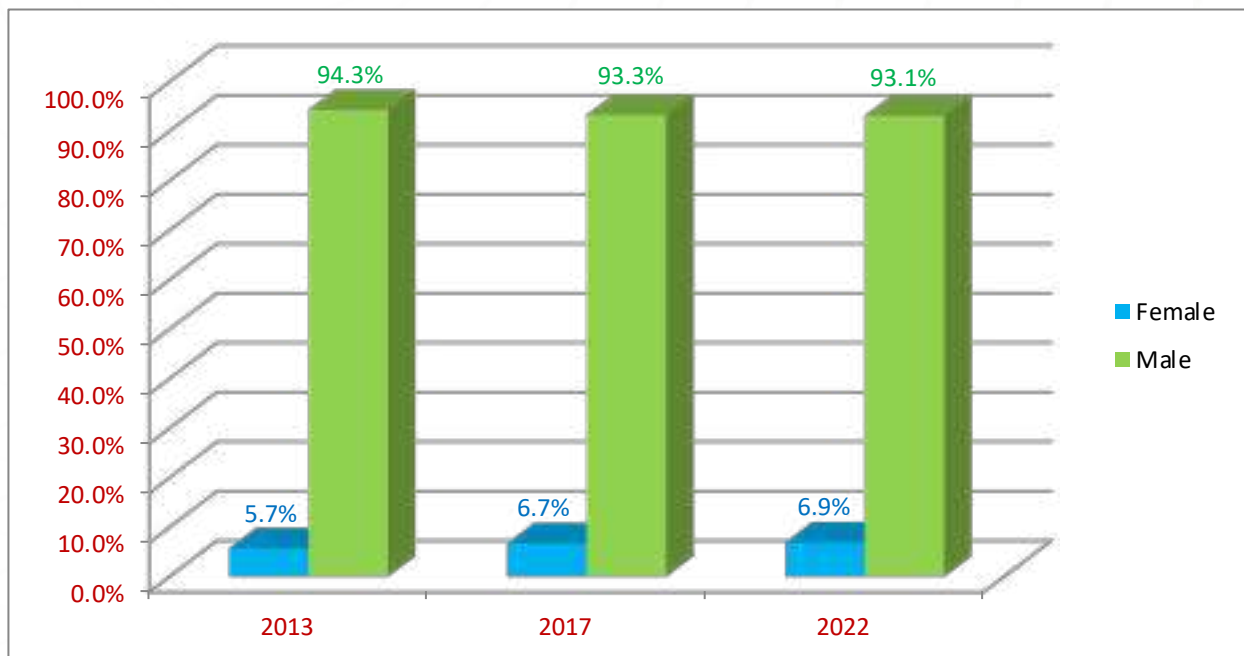


Figure 3: Percentage Representation of Members of County Assembly by Gender 2013 -2022

With respect to youth representation in the County Assemblies, there were no data available (to use) for the 2013. In 2017, there were 287 youth out of 1450 (19.7%) elected as MCAs, of whom 274 (95.5%) were male and 13 (4.5%) were female (IEBC, 2020). This shows a drastic reduction compared to the

10 (0.7%) youth MCAs elected in 2022 as reported by NGEC 2022.

With respect to PWDs, there were no data available for 2017. In 2013, there were 10 elected PWDs elected to the County Assemblies, all of whom were male (NGEC, 2016). This, compared to the two (2) reported for 2022 shows a drastic reduction.



3.3 Factors Facilitating SIGS Inclusivity

3.3.1 Legal Provisions and Reforms

The legal reforms on addressing the participation and representation of SIGs started with the 1997 Inter-Party Parliamentary Group (IPPG) agreement between the ruling party, KANU, and opposition political parties, which was meant to level the playing field for the 1997 general election. The agreement advocated for the reservation of half of the nominated National Assembly seats to women, and required political parties to ensure gender balance in nominating members to the National Assembly. The legal support climaxed with the 2010 Constitution which provided for the substantive support of not only women but also the youth, PWDs and ethnic minorities and marginalized communities.

The key constitutional provision is the reservation of 47 woman representative seats in the National Assembly that arguably provides a platform for women to develop knowledge and skills for political mobilization. In the 2022 general election, the impact of this provision is indicated by the number of women who transitioned from Woman Representative seat to Governor (notably in Meru and Homa Bay Counties) and MP seats (notably in Kisumu West, Lamu East, Githunguri and Kipipiri consistencies); and those who transitioned from nominated NA seat to MP seat (e.g., Beatrice Elachi, MNA of Dagoretti North and Naisula Lesuuda, MNA of Samburu West).

Statutorily, the key laws that have had impact in the 2022 general election are the Political Parties Act 2011 which places upon political parties the burden of ensuring that they have representation of SIGs in the party's governing body and in its membership. Further, the Political Parties Act 2011 provides for the establishment of the political parties' fund of which 15 percent is set aside towards promoting political participation of SIGs in the qualifying political parties. In addition, the Representation of Special Interest Group Laws (Amendment) Act, 2019 requires that political parties allocate funds from PPF to election campaign activities of SIGs through publicity and other measures.

Compliance to these legal requirements was, for instance, observed:

- a. Giving direct ticket to women incumbents, reported in ODM,
- b. Giving direct tickets to youth and PWD reported in FORD-Kenya where one of the PWD beneficiary (Mr. Martin Wanyonyi of Webuye East Constituency) won a MP seat;
- c. Giving tickets to women who, in opinion polls, became runners-up reported in ODM;
- d. Giving funding to women aspirants reported in ODM.
- e. Training women and youth aspirants in political mobilization reported in ODM;
- f. Civic education promoting women's cause (e.g., Chagua mama campaign) reported in Jubilee.

3.3.2 Subsidy of Nomination Fees in Party Primaries

Political party nominations had a deadline of April 22, 2022, roughly three and half months to the general election. Political parties addressed the participation and representation of SIGs through subsidizing nomination fee for aspirants. Among five political for which data were available (see Table 1), only Ford-Kenya had subsidy for three SIG categories (women, youth and PWD) across all seats from president to MCA. The highest subsidy was in Jubilee Party's youth category who paid 20%, while UDA subsidized for women and youth but not PWD.

The most favourable party for PWDs was Jubilee Party whereby they had no fee to pay (i.e., 100% subsidy) for all seats. In most of the other parties (e.g., ODM, Ford-K) the subsidy was at 50%.

The most favourable party for the youth was the Jubilee Party whereby the nomination fee ranged from 20% for Senate, 25% for

each of Governor and MP seats, and 30% for MCA. The general pattern of the other parties was 50% subsidy for the Governor, Senate, MP, Woman Representative, and MCA seats.

For women, the general pattern across political parties was a waiver of 50%, except in WDM where women paid 75% for each of the MP and Senate seats.

Despite the subsidy, key informants observed that most of the SIGs did not proceed to the general election due to the practice of negotiated democracy that was prevalent across many political parties. This means the SIG members were impressed upon to step down in favour of non-SIG categories, a practice observed in Jubilee Party, WDM-K, UDA. A key observation by WDM key informant was that the popular SIGs that were prevailed upon to step down moved to other parties and were eventually elected. In the end, there was no excellent improvement for the SIGs, even though they generally performed better in 2022 than in previous elections.



	President			Governor			Senate			MP			Woman Rep		MCA		
	Female	Youth	PWD	Female	Youth	PWD	Female	Youth	PWD	Female	Youth	PWD	Youth	PWD	Female	Youth	PWD
Jubilee	-	-	-	50	25	0	50	20	0	50	25	0	50	0	50	30	0
UDA	50	50	-	50	50	-	50	50	-	50	50	-	50	-	50	50	-
ODM	-	-	-	50	50	50	50	50	50	50	50	50	50	50	50	50	50
WDM	-	-	-	-	-	-	75	-	-	75	-	-	-	-	-	-	-
FORD-Kenya	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50

Notes:

- *The males' fee is the ordinary (comparison) fee for President, Governor, Senate, MP and MCA seats;
- *The females' fee is the ordinary (comparison) fee for the Woman Representative seat;
- The Political Parties fees were:

- Jubilee: President** – N/A, Governor- 500,000; Senator – 250,000, MP - 200,000, WR- 200,000; MCA - 50,000;
- UDA:** President 1 million; Governor – 500,000; Senator – 250, 000; MP – 250,000; WR- 250,000, MCA – 50,000.
- ODM:** President – NA; Governor – 500,000; Deputy Governor – 250,000; Senator – 250,000; MP- 250,000; WR- 250,000; MCA – 50,000;
- WDM:** President – 1 million; Governor- 500,000; Senator – 200,000; MP- 200,000; WR – 200,000; MCA – 25,000;
- FORD-Kenya:** President – 1 million; Governor- 300,000; Deputy Governor – 200,000; Senator – 100,000; MP- 100,000; WR – 100,000; MCA – 20,000.

*Table 2: Political Parties' nomination fee for SIG candidates as a percentage of the ordinary fee**

3.3.3 Affirmative Action through Woman Representative and Nomination Seats

In the context of the 2022 general election, the affirmative actions were the preceding elections' 47 Woman Representative seats, and the nominated seats in Senate, as well as National and County Assemblies. Ordinarily, incumbency provides a wide range of assets necessary for campaign success in mobilization knowledge and skills, financial resources, and social capital in form of acquaintance/friendship networks and public visibility. In the 2022 general election, some of the impact of affirmative action and related political experience were indicated by:

- a. **Woman Representative affirmative seats transiting to elective seats (e.g., Those who transited to Governors** - Kawira Mwangaza - Meru and Gladys Wanga – Homa Bay; those who transited to MPs; e.g., Wanjiku Muhia; Gathoni Muomba; Ruweida Mohammed and Rosa Buyu).
- b. **Nominated persons transiting to elective seats (e.g., Those who transited to Governors,** notably Cecily Mbarire - Embu with two term nominations (2002 -2007 and 2017 – 2022; and one term election (2007 - 2013); those who transited to MP seats e.g., Beatrice Elachi; Naisula Lesuuda; those who transited from MCA to MP seats, e.g., Martin Wanyonyi).

3.3.4 Spontaneous Social and Cultural Change

While affirmative action is direct and planned social change, there are SIG members who

would be elected through sheer personal effort. In the 2022 general elections, spontaneous cultural change was indicated by:

- a. First-time elected SIGs (e.g., Linnet Toto, the 24-year-old Woman Representative of Bomet County; George Nene the 22-year MCA of Elementaita Ward elected as a university student and campaigned using a bicycle, donkey and a pushcart).
- b. Elected SIGs transiting from lower to higher authority seats (e.g., notably Susan Kihika of Nakuru County and the 33-year-old Stephen Sang of Nandi County transiting from Senator to Governor seats).
- c. Elected SIGs retaining/ reclaiming elective seats (e.g., Alice Wahome, Mary Wamaua, Martha Wangari; Alice Ng'ang'a; Tim Wanyonyi).

3.4. Factors Hindering SIGs Inclusivity

3.4.1 Legal and Institutional weaknesses

3.4.1.1 Constitutional and Legal Issues

The Constitution provides explicit provisions for the support of SIGs. The significant challenge has been on operationalization of those provisions. With respect to enhancement of women representation through the gender rule that requires at least one-third representation of women in elective seats, the constitution does not provide the mechanization for its realization but mandates Parliament to enact the appropriate laws. By 2022 general election,



the respective bill had spectacularly failed in three Parliamentary cycles primarily because of the Kenyan electoral system that comprises of single member constituencies meaning that promoting women elections automatically means men stepping down for women.

With respect to PWDs, the Constitution of Kenya 2010 requires that Parliament shall enact legislation that ensures voting is simplified, transparent and factors in the needs of PWD. As a consequence, Parliament enacted the Representation of Special Interest Groups (Amendment) Act, 2019 which provides for mechanisms of funding to SIGs and for the establishment of a platform to advocate for accessibility of electoral infrastructure including technology, voter registration and polling stations. One key need, for instance relating to visually impaired persons could be having a mechanism through which voters would recognize candidates, e.g., providing braille characters for the names of candidates.

This, however, was not implemented. In the run-up to the 2022 general election in October 2021, IEBC promised PWDs that the agency would procure special booths which could be accessed by those with physical disability to ensure secrecy of their votes and convenience during marking of ballot papers. This also was not realized. These failures are key because it can be expected that PWDs would elect one of their own in the general election. The lack of support, as intended in the Constitution, therefore means the likelihood of poor performance of PWDs in the election.

3.4.1.2 Low Youth Voter Registration and Voting Apathy

The run-up to the 2022 general election was characterised by low registration of new voters, who were essentially the youth. At the closure of the exercise in February 2022, IEBC had targeted 4.5 million voters but realized only 1.03 million voters representing a paltry 22.9%. In a 2016 report, the National Gender and Equality Commission observed that there was a low uptake of national identity cards among the youth which hindered their participation in the 2017 general election. It is, however, imperative to note that in Kenya the youth would normally apply for identity cards (IDs) in order to register for mobile money services and higher education. That means the low voter registration is essentially due to voter apathy.

3.4.1.3 Lack of Internal Democracy in Political Parties

Lack of internal democracy in political parties is largely manifested in the so-called negotiated democracy, which means someone withdrawing their candidacy to another competitor. In the 2022 general election, this was chiefly reported by SIG members being asked to set aside their candidacy and support other non-SIG candidates.

Lack of internal party democracy is also indicated by irregular nomination to parliament. In Article 97 (1c) CoK provides that nominations to parliament are for purposes of representing

requirement. In some cases, candidates in the general election had been nominated (or nominated themselves) meaning that they were using the nomination seat as a fall-back, in event of failing to be elected. Given that

the nomination seat enables the incumbent to prepare for a future election, the bypassing of SIGs undermines their performance in subsequent elections.



4

SECTION 4 : Conclusion and Recommendations

4.1 Conclusion

The 2022 general election had considerable bids and/or success by the SIGs in all 6 elective seats from the Presidency to the County Assembly. The most notable are female and/or youthful Presidential running mates, female Governors, female Governor running mates, youth Governors and Senators, PWDs in National Assembly and youthful and economically underprivileged member of County Assembly. However, there was a dent in the disqualification of a PWD bid for the Presidential seat. A significant challenge for this study was availability of complete data especially relating to the youth and PWDs. This is because only research studies can provide such profiles once IEBC has published the results. It is noteworthy also that in Kenya there is no way of establishing what population categories vote for a certain candidate, except through opinion polls.

With respect to trend, there was notable increment in women nomination as Deputy Presidents. However, whereas there have been women Presidential candidates in previous elections (e.g., in 2013 and 1997) the 2022 general election did not have a female candidate. The trend shows significant increase in women representation in the Governor's seat and in the appointive position of Deputy Governor. In the Senate, there was marginal representation of women which has not

changed from 2017. Whether women prefer the Governor seat more than the senate seat is an interesting pattern which can only be confirmed with time. In the National Assembly whose data on women representation dates back to the first Parliament in 1969 shows minimal improvement over the five decades.

This is an unfavorable trend considering the various Constitutional and legal reforms intended to improve women's representation. Data on County Assemblies show significant increase of women representation which has been continuous but modest from 2013 (5.7%) through 2017 (6.7%) to 2022 (6.9%). Overall, it would be interesting to find out whether the affirmative action Woman Representative seat does inhibit women's bid for the higher elective MP, Senator or Governor seats.

With respect to the youth and PWDs, there are no sufficient data to firmly demonstrate the trend. The scanty available data especially for 2022 show a reduction of representation from previous years but this might be a statistical artefact owing to the incompleteness of analysis of 2022 results by different agencies such as IEBC or NGEC. It is notable that the age and PWDs profiles of 2013 and 2017 general election results were published in 2016 and 2020 respectively.



The critical factors identified as facilitating the inclusivity of SIGs include Constitutional and legal reforms of which the single most important legal instrument is the Representation of Special Interest Groups (Amendment) Act, 2019 which provides for enhanced support of SIGs through structured systems of relevant institutions (e.g., see obligations placed upon PPF, NGEC, IEBC, and political parties). Other key instruments subsidy of nomination fees in party primaries as well as the affirmative action through Woman Representative and nomination seats. In terms of factors hindering the participation and representation of SIGs the single most significant is weak internal democracy in political parties, which has given rise to the practice of the so-called negotiated democracy whereby SIGs are made to step down for non-SIG candidates.

4.2 Recommendations

The recommendations are:



Political parties should review the so called negotiated democracy and refrain from asking SIGs to step down in favor of non-SIG candidates. In this respect the political parties should develop an attitude that winning an elective seat is not an end in itself. That means, even if an SIG candidate would fail to win that experience is important for future electoral bids. This recommendation also calls CMD-Kenya to spearhead the attitude change in

political parties through training and other means of advocacy (e.g., within the People’s Dialogue Festivals, publication of information and education materials).



Enhanced adoption of the Representation of Special Interest Groups (Amendment) Act, 2019 as well as its awareness among relevant stakeholders including IEBC, NGEC, and political parties. In this respect CMD-Kenya would play a significant role in the advocacy of this law within political parties.



It is important to identify how SIG candidates are voted for by different population groups. Our recommendation is for CMD-Kenya and any other civil society organization to take up the initiative to conduct a nation-wide baseline survey to establish different population groups, including SIG themselves, likelihood of electing SIGs.



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OUR VISION

The Vision of CMD-Kenya is “a multi-party democratic Kenyan society that is issue based, people-centred, and accountable to the public.”

OUR MISSION

The Mission of CMD-Kenya is “to facilitate the institutionalisation of multiparty democracy through policy influence and capacity building of political parties in Kenya”.

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