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# Decentralisation and inclusion in Kenya

From pre-colonial times to the first decade  
of devolution



## CHAPTER 5

# **Devolution and the promise of democracy and inclusion: An evaluation of the first decade of county governments, 2013-2022**

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### **Introduction**

Two variables preoccupy this entire study - decentralisation and inclusion. We hypothesise that there is a positive relationship between decentralisation and the inclusion of various groups; that the more we decentralise the more we attain inclusion. That the converse is also true: the more we centralise the more we marginalise.

The conceptual basis for the historical relationship between decentralisation and inclusion in Kenya was addressed in Chapter 2 of this study. Chapter 3 discussed the first variable (decentralisation) in historical perspective, while Chapter 4 reviewed the second variable (inclusion) also historically. All the chapters above cover the trajectory of the respective variables from pre-colonial times to the first decade of devolution under the Constitution of Kenya, 2010 (2010 Constitution).

What emerges clearly from the expositions are the struggles for decentralisation and inclusion by those on the outside, and efforts to congest more powers at the centre and to exclude the others by those on the inside. However, the clamour for decentralisation and inclusion won a major battlefront when the 2010 Constitution, which entrenched devolution as one of the overarching principles, was promulgated.

The 2010 Constitution associates devolution with democratic and accountable exercise of power; national unity; self-governance; public participation; social and economic development; provision of proximate services; equitable sharing of national and local resources; the rights and interests of minorities and marginalised communities; decentralisation; and separation of powers.<sup>1</sup> Kenya's devolution promises democracy and accountability, and equality and inclusivity, which ideals are critical for the marginalised groups. But has devolution delivered on these fronts? This chapter explores this question after a decade of its career. It evaluates the objectives of devolution both to democratise governance and include the marginalised groups. More specifically, the chapter reviews the extent to which the first decade of devolution, 2013-2022, realised democratic inclusion for three marginalised groups - women, youth, and PWDs.<sup>2</sup> It does so by responding to three main questions, whether: i) the institutions of county governance incorporated members of the marginalised groups; ii) the counties enacted laws and policies that are responsive to the rights and welfare of the marginalised groups; and iii) the counties initiated projects that resonate with the needs of the marginalised groups.

The study deployed a number of research methodologies. First, we reviewed literature on the subjects of devolution and inclusion in Kenya. Most of the literature review was carried in the first four chapters of this book. Second, we selected five county government case studies - Garissa, Kakamega, Mombasa, Nakuru and Narok - and three marginalised groups - women, youth and PWDs - to enable an in-depth analysis of the specific counties and marginalised groups and to provide diverse

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1 Constitution of Kenya (2010), Article 174; Article 10 also introduces the values of human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised as national values and principles that undergird the Constitution.

2 While Article 100 includes ethnic communities and marginalised communities among the groups in need of legislation to address their inclusion, diversities in definition of ethnic minorities and variances in ethnic composition within counties makes it difficult to evaluate their representation at the national level and also across counties.

contexts for the research as the cases selected have an urban<sup>3</sup> and rural<sup>4</sup> feel, a nomadic<sup>5</sup> and sedentary<sup>6</sup> context, and African<sup>7</sup>, Christian<sup>8</sup> and Islamic<sup>9</sup> religious backgrounds as well as diverse demographics of gender, sex, age and disability. Third, using very loose questionnaires, we interviewed knowledgeable persons in the study counties in our quest for answers to questions i), ii), and iii) above. Fourth, we presented our research findings before the Kabarak University Annual Law Conference, held on 15 and 16 June 2022, at Kabarak University, where representatives of the study counties and the marginalised groups and other participants validated our research findings. Finally, we analysed the findings of the field research and reduced them into the following exposition; organised thematically along the lines of the three research questions stated above.

## **County institutions and the inclusion of the marginalised**

### *Women, devolution and inclusion*

For reasons such as its grassroots reach and potential for higher levels of self-determination, it was not naïve to expect that devolution would afford women more opportunities for participation through elective positions (such as the seats of member of county assembly (MCA), governor and deputy governor), appointive positions (such as membership of the county executive committees), and leadership positions in the county assemblies. However, the first decade of devolution, 2013-2022, presented a very different reality. Considering the constitutional 2/3 gender rule, the overall performance of women in

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3 Mombasa and Nakuru.

4 Garissa, Kakamega and Narok.

5 Garissa and Narok.

6 Kakamega, Mombasa and Nakuru.

7 Narok.

8 Kakamega and Nakuru.

9 Garissa and Mombasa.

elective and appointive positions at the national level, and the success of the youth in electoral politics at the county assembly level, women's political participation at devolved governance level in the first decade of devolution was dismal.

Much as the above deduction is accurate, the global report requires some nuance. Through the county case studies, it was possible to highlight the difficult areas as well as see the possibilities. For instance, in both electoral circles, Garissa and Narok did not elect any woman to their assemblies through the ballot, which might point to a cultural challenge. On the other hand, Kakamega County, which by 2022 had never elected a woman to Parliament since independence, had four women enter its County Assembly through ballot both in 2013 and 2017, which might signal a new beginning for women. Another positive change is that the gender top-up formula applied to county assemblies nationally proved to be an effective tool for reducing the shortfalls of competitive electoral politics and ensuring adequate representation of women as per the constitutional threshold. But it was also the basis for some county assemblies denying women committee leadership positions, and the new pretence for advancing the view that because women joined the county legislative institutions predominantly through the nomination process, they are lesser beings.<sup>10</sup>

Our study counties also accentuate that although most counties barely met the 2/3 gender rule in the appointment of county executive committee members, the few women appointed were entrusted with both the ministries that are thought to be important and those considered inferior. Another discovery is that on rare occasions, women occupied the offices of speaker and deputy speaker, and sometimes chaired the committees of county assemblies. Like in the case of the county executive committee member (CECM) positions, women chaired

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10 See the case of *National Gender and Equality Commission (NGEC) v Majority Leader, County Assembly of Nakuru & 4 others: Jubilee Party and another* (interested parties), Petition 1 of 2019, Judgement of the High Court of 29 July (2019) eKLR, discussed later in this chapter where this distinction was in issue.

important county assembly committees such as Education, Science and Technology, Justice and Legal Affairs, Roads and Infrastructure, among others.

### *Women's participation through election by ballot*

The performance of women in the electoral contests for the MCA positions was far below the overall range for women in most of the elective positions, was dismal in comparison with the performance of the youth, and could cast doubt on the impact of devolution in its first decade on the participation of women in electoral politics.

As a result of the Independent Electoral and Boundaries Commission (IEBC) failing to disaggregate electoral results statistics on the basis of sex in 2013, available literature offers five different sets of data regarding the number of women elected to the county assemblies nationally; being 75,<sup>11</sup> 82,<sup>12</sup> 84,<sup>13</sup> 88<sup>14</sup> and 91.<sup>15</sup> While this complicates matters, it does not completely bar analysis.

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- 11 Rift Valley Institute, 'Taking stock of Kenya's gender principle: The representation of women in politics in Kenya, 2013-2017', Policy Brief, June 2017, 1.
  - 12 Federation of Women Lawyers (FIDA) Kenya and National Democratic Institute (NDI), 'Key gains and challenges: A gender audit of Kenya's 2013 election process', FIDA Kenya, 2013, 47 and 50; National Democratic Institute (NDI) and Federation of Women Lawyers (FIDA) Kenya, 'A gender analysis of the 2017 Kenya general elections' FIDA Kenya, 2018, 6.
  - 13 Jill Cottrell Ghai, 'Women's gains under the new Constitution' in Yash Pal Ghai, Emily Kinama and Jill Cottrell Ghai (eds) *Ten years on assessing the achievements of the Constitution of Kenya 2010*, Katiba Institute, 2021, 263, 265; Jill Cottrell Ghai, 'Women's gains under the new Constitution,' *Youth Café*, 2 August 2019; Jacinta Muinde, 'Winning women's hearts: Women, patriarchy and electoral politics in Kenya's south coast' *Africae*, 2018; Fred Oluoch, 'More women elected in Kenya' *East African*, 12 August 2017; Maureen Kinyanjui, 'Nairobi's only five elected female MCAs', *The Star*, 23 February 2022; Ibrahim Oruko, 'Only 96 out of 1,450 wards elected women on August 8' *Daily Nation*, 23 August 2017.
  - 14 Machel Waikenda, 'Let us soberly seek a solution to the 2/3 dilemma', *The Star*, 23 May 2015.
  - 15 FIDA Kenya and NDI, 'Key gains and challenges: A gender audit of Kenya's 2013 election process', 50.

Taking the lowest or highest figure, the number of women elected to the county assemblies went up from 75 or 91 in 2013 to 98 in 2017, a leap from 5.1% or 6.3% to 6.8%. It is a story of marginal improvement.

Figure 1 Gender representation on county assemblies 2013 and 2017 (lowest figures)

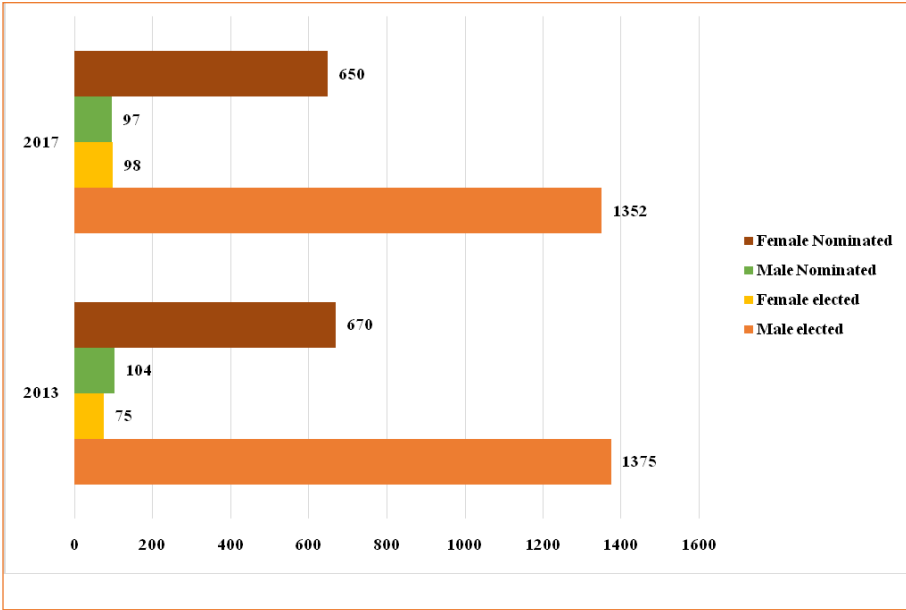


Figure 2 Gender representation in county assemblies 2013 and 2017 (highest figures)

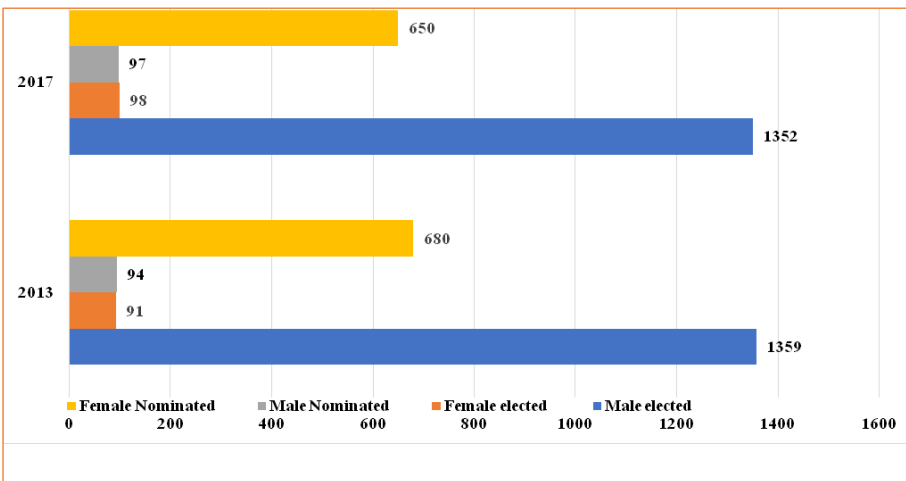


Figure 3 Percentage of women elected to select county assemblies

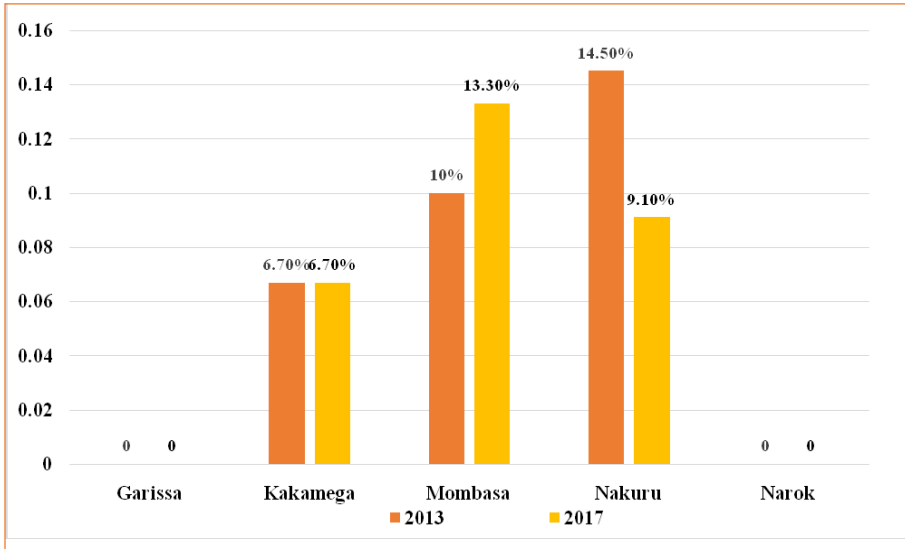


Table 1: Women elected to the county assemblies of the study counties

Counties (MCA)	Women elected	
	2013 <sup>16</sup>	2017 <sup>17</sup>
	Number	Number
Garissa	0 out of 29	0 out of 29
Kakamega	4 out of 60	4 out of 60
Mombasa	3 out of 30	4 out of 30
Nakuru	8 out of 55	5 out of 55
Narok	0 out of 30	0 out of 30

Regarding the five study counties specifically, the averages for the MCA positions shown in Figure 3 exhibit mixed results. One, and on a positive note for the movement for gender equality, Mombasa County

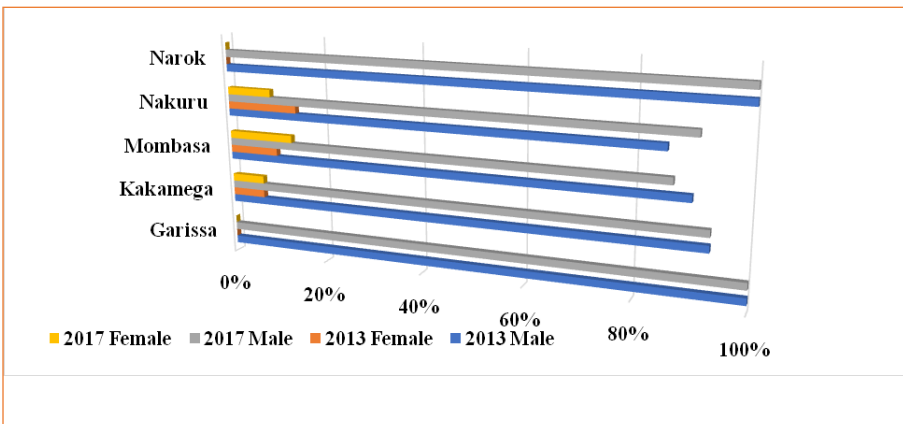
16 Kenya Gazette, CXV (54) 25 March 2013, 3901.

17 Kenya Gazette, CXIX (121) 22 August 2017, 8230; Kenya Gazette, CXIX (123) 25 August 2017, 8378.



elected through ballot one more woman in 2017 making it four out of 30 (13%). Two, and on a neutral note, Kakamega maintained four women out of 60 in both electoral circles, but there is a bigger story to be told: Women set a new record through the MCA positions for none of the Kakamega County constituencies had elected a woman since independence, and no woman was elected Governor, Deputy Governor or Senator in the first decade of devolution. Three, and on a negative note, Nakuru County, which elected eight women out of 55 (15%) in 2013, regressed to only 5 (9%) in 2017. Finally, and on a very negative note, as at the end of the 2017-2022 term, Garissa and Narok counties had not elected a female MCA through the ballot.

Figure 4 Study county analysis of gender representation in county assemblies 2013-2022



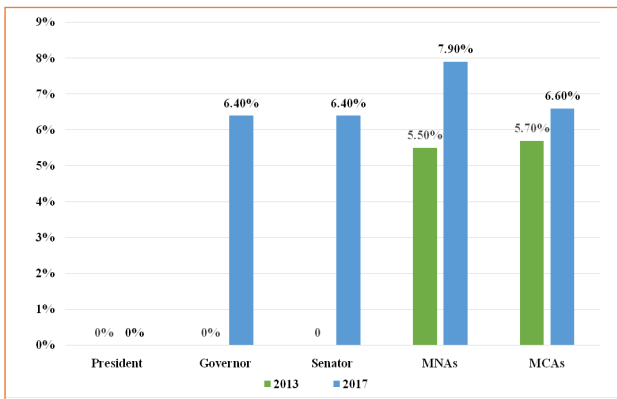
Curious as the performance of Garissa and Narok may be, it was expected given that the two cases were selected based on the assumption that Islamic and Somali culture, as practiced in Garissa, and the Maasai culture, as practiced in Narok, may be obstructing women's political participation including at the devolved governance levels. The failure of Wajir County, with similar ethnic, religious, and cultural demographics as Garissa, to elect any female MCA during the same period may corroborate the view that the combination of Somali and Islamic culture as practiced by the people of the region may be hindering women's political participation. Compounding the women's political crisis in

Garissa and Wajir is the culture of negotiated democracy that defers to the clans and their male-dominated leadership.<sup>18</sup>

By showing that counties like Mombasa were above the national average, and others like Garissa and Narok did badly, and by revealing certain context-specific barriers to women's political representation like culture, religion, and political traditions, our study counties gave a practical feel to the national statistics beyond merely demonstrating that such global data could be misleading.

Although the participation of women improved in 2017 overall, there are glaring difficulties with the MCA positions. First, given that 145 women (7.7%) were elected by ballot to the various positions in 2013 and 172 (9.2%) in 2017 out of the 1882 total elective positions,<sup>19</sup> the above percentages for the MCA positions [(5.1% or 6.3%) in 2013 and 6.8% in 2017] were below the national average for women's leadership for both cycles.

Figure 5 Women as a percentage of elective seats 2013 and 2017



Source: NDI and FIDA Kenya 'A gender analysis of the 2017 Kenya general elections' (2018).

18 See Muna Ahmed, 'Patriarchy and negotiated democracy knock Wajir women off the ballot', *The Elephant*, 1 October 2021; NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general elections', 37.

19 The total number of elective seats if the positions of deputy president and deputy governor are included is 1930.

Second, the rate of improvement for the MCA position was lower than for all the other positions with the exception of the offices of President and Deputy President (where the male incumbents were re-elected) and to a very limited extent deputy governors as discussed below. While no woman was elected as governor or senator in 2013, both institutions recorded an improvement of 6.4% when three women were elected in each one of them in 2017.<sup>20</sup> Depending on which data one goes by for the 2013 General Elections, women's performance in the MCA positions may be slightly below, slightly above or within the range of the average for the National Assembly where 16 women (5.5%) were elected by ballot out of the possible 290 constituencies.<sup>21</sup> However, in 2017, the performance of women in the MCA positions was below the National Assembly performance of 23 elected women (7.9%).<sup>22</sup> The performance of women in National Assembly elections improved from 5.5% in 2013 to 7.9% in 2017, an increase of 2.4%. For the MCA positions, the improvement was marginal at 1.7% or 0.5% depending on which data is used for 2013.

Third, if it is taken into account that 73% of the women who contested in the 2017 primaries vied for the MCA positions, the rate of conversion from candidature to election was quite low,<sup>23</sup> especially when compared to the National Assembly constituencies where women got far more seats in 2017 yet fewer women contested. Women's improved performance in the National Assembly was realised despite a very slight increment in the women candidates (131) in 2017, compared to the 129 who contested in 2013.<sup>24</sup> As Table 2 shows, a possible explanation for this clinical performance by women in 2017 could be the fact they had had the opportunity to occupy the 47 special seats reserved for women in

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20 See Figure 5.

21 FIDA Kenya and NDI, 'A gender audit of Kenya's 2013 election process', 47.

22 Independent Electoral and Boundaries Commission, 'Data report of 2017 elections', April 2022, 12.

23 NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general elections', 27.

24 IEBC, 'Data report of 2017 elections', 11; NDI and FIDA Kenya, 'A gender audit of Kenya's 2013 election process', 50.

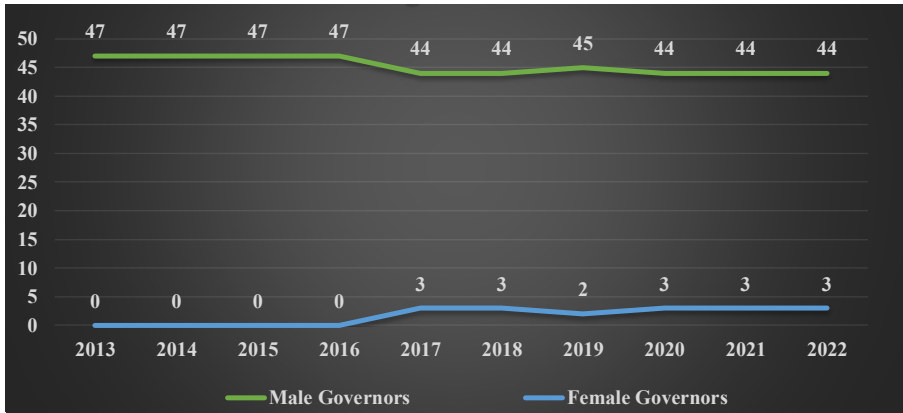
the National Assembly, other affirmative action positions in the Senate and National Assembly, MCA positions and other public roles, which vantage points empowered them in terms of reputation and visibility, in addition to availing the resources and strategies required for electoral success. Thus, given their grassroots reach and the potential of the MCA positions to catapult women to other county-level and national political offices, concerted efforts will be needed to ensure a higher success rate for women at the county assembly levels.

**Table 2: Women MPs and their previous roles**

NAME	Electoral Area
Mary Emase	2013-Elected MNA Teso South 2017-Vied for MNA Teso South
Wanjiku Muhia	2013- WMNA Nyandarua County 2017-Nominated East African Legislative Assembly (EALA) MP
Millie Odhiambo	2013-Elected MNA Suba North 2017-Re-Elected
Naisula Lesuuda	2013-Nominated Senator 2017-Elected MNA Samburu West
Mishi Mboko	2013-WMNA Mombasa County 2017-Elected MNA Likoni
Beatrice Elachi	2013-Nominated Senator 2017-Vied for Dagoretti North MNA 2017-2020- Elected Speaker of Nairobi County Assembly
Lilian Gogo	Lecturer Egerton University 2017-Elected MNA Rangwe
Rachel Nyamai	2013-Elected MNA Kitui South 2017-Re-Elected
Eve Obara	MD Kenya Literature Bureau 2017-Elected MNA Kabondo Kasipul
Gathoni Wamuchomba	Journalist 2017-Elected WMNA Kiambu county
Rozaah Buyu	2007-Vied for Kisumu West MP 2013-Vied for Kisumu West MNA 2017-WMNA Kisumu
Martha Wangari	2013- Nominated Senator 2017-Elected MNA Gilgil
Jayne Kihara	2003-Elected MP Naivasha 2007-Vied for Naivasha MP 2013-Vied for Senate, Nakuru County 2017-Elected Naivasha MNA

	Charity Kathambi	2013-Vied for Njoro MNA 2016-Appointed National Director, Kenya National Library 2016 2017-Elected Njoro MNA
	Alice Wahome	2007-Vied for MP Kandara 2013-Elected MNA Kandara 2017-Re-Elected MNA Kandara

Figure 6 Representation of governors by gender

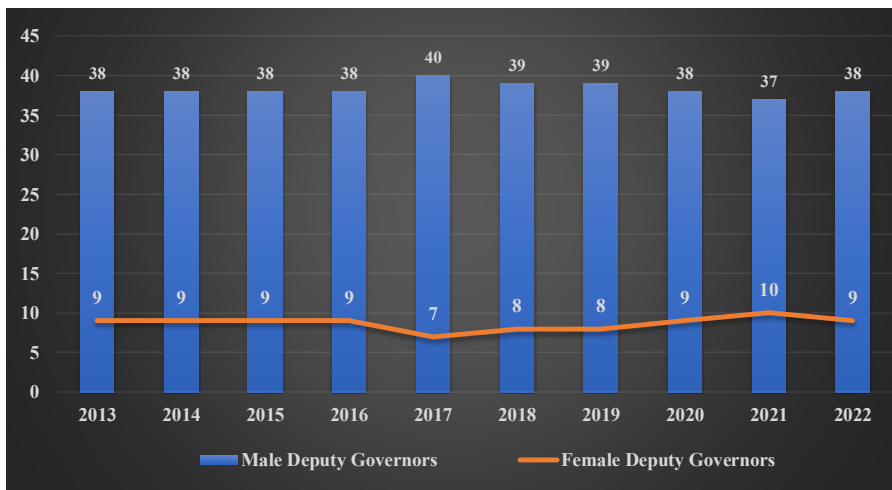


On one hand, the number of female governors went up from zero in 2013 to three in 2017; on the other, the number of deputy governors of the same gender went down from nine in 2013 [including Mombasa County’s (Hazel Katana) and Narok County’s (Evelyn Chepkirui)] to seven in 2017. Although no woman was elected in 2013 to the positions of governor, nine women were elected as running mates in the positions of deputy governor, which in mathematical terms amounted to 19% of the available positions. After the 2017 General Elections, five governors, including one woman, exited office either through death or impeachment.<sup>25</sup>

25 Governors John Nyagarama (Nyamira), Wahome Gakuru (Nyeri) and Dr Joyce Laboso died while in office, while Ferdinand Waititu (Kiambu) and Mike Mbuvi Sonko (Nairobi) were impeached. See Kenya: Moraa Obiria, ‘The growing list of female deputy governors’, *Daily Nation*, 20 January 2021.

Governors Dr Joyce Laboso (Bomet), John Nyagarama (Nyamira), and Wahome Gakuru (Nyeri) died while in office, while Ferdinand Waititu (Kiambu) and Mike Mbuvi Sonko (Nairobi) were impeached. Laboso's death in July 2019, about two years after elections, reduced the count of women governors by one, but Ann Kananu was elevated to the position of Governor in 2020 after the impeachment of Sonko. Through death, a woman Governor was lost, through impeachment a woman Governor rose to power keeping the women's total tally in the same place. Compared to 2013, the number of elected women deputy governors went down by two to seven in 2017, making it 15% of the elective positions. However, the number of female deputy governors increased to as high as ten in 2021 and ended with nine in 2022 due to the above vicissitudes of politics as Figure 7 shows. With the deaths and impeachments discussed above, Kiambu and Nyeri counties had women taking over as deputy governors. In Nairobi, the female Deputy Governor served briefly before finally being sworn in as Governor and appointing a male Deputy Governor.<sup>26</sup>

Figure 7 Representation of deputy governors by gender



26 Jael Mboga, 'Ann Kananu sworn in becomes third Nairobi Governor', *The Standard*, August 2021.

As Figure 7 shows, at the end of the 2017-2022 term, the number of female deputy governors was the same as that of the 2013-2017 cycle – nine. The second cycle of devolution was better for the gubernatorial level as it brought in three female governors while keeping the number of female deputy governors intact after the dust had settled. Although the gender inclusion agenda came out better ultimately, it is important to learn the lesson to be vigilant throughout the electoral season as gains could suffer midway because of death and impeachment.

Arguably, the increase in female contestants and especially those who had held State or public office contributed to the higher impact of women in the gubernatorial elections of 2017. Charity Ngilu of Kitui, Ann Waiguru of Kirinyaga and Joyce Laboso had occupied high-level national positions – Cabinet Secretary for Land, Housing and Urban Development; Cabinet Secretary for Devolution; and Deputy Speaker for the National Assembly, respectively – which could mean that the visibility, influence and resources that come with holding prominent appointive or elective positions are useful factors for realising success for women in subsequent electoral contests. This point should be an important motivation for appointing or nominating women to strategic positions with the understanding of the potential of such locations to catapult them to even higher political heights. However, it is necessary to point out that the conversion rate from nomination to election for female deputy governors was zero in the first decade of devolution. Some studies have attributed this deficiency to the lack of clear guidance on the role and authority of the offices of deputy governor, which tends to render most of them invisible.<sup>27</sup>

When compared to the percentage of youth elected to the MCA positions, women performed dismally, at best; at worst, it is a situation that demands an enquiry. For, while this study concludes later on that county assemblies are the places for youth political redemption, such cannot be said about women; not even youthful women since out of the 287 youth that were elected to MCA positions in 2017, only 13 were

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27 NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general elections', 32.

female.<sup>28</sup> This below-average performance of women calls for urgent interventions of which the beginning point should be to inspire women to take a serious interest in the politics of the county assemblies because of their strategic location at the grassroots, and the fact that the MCA positions account for 77% of all open elective seats.<sup>29</sup>

Comparisons between national and county averages may be good for academic analysis but are certainly bad yardsticks in the current study because both levels operated below the new constitutional standard of the 2/3 gender rule, and the national averages were yet to show marked improvement from the pre-2010 performance. Despite the establishment of opportunities for the 47 women representatives, women only accounted for 20.77% of elected representatives in the National Assembly in 2017.<sup>30</sup> Additionally, the representation of women in elective positions in the first decade of devolution only improved marginally from the pre-2010 era. For example, while in 2017, 7.9% of the elected members of the National Assembly were women,<sup>31</sup> in 2007, the figure stood at 7.27%.<sup>32</sup> Nevertheless, if the upward variances in representation through election, indicated in Table 3, are anything to go by, with sustained inclusion efforts, there will be an increase in women's representation in elective positions.

**Table 3: Variance in percentages of elected women between 2013 and 2017**

Position	2013	2017	Variance
Governor	0%	6.4%	+6.4
Deputy Governor	19.1%	14.9%	-4.2% <sup>33</sup>

28 IEBC, 'Data report of 2017 elections', 15.

29 NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general elections', 27.

30 Cottrell Ghai, 'Women's gains under the new Constitution', 263.

31 This percentage excludes the women representative seats.

32 Cottrell Ghai, 'Women's gains under the new Constitution', 265.

33 While in 2017 the number of deputy governors was lower than in 2013, due to changes in the leadership of five counties, the number of deputy governors by the end of the term was the same for both terms.



Senator	0%	6.4%	+6.4%
Member of National Assembly	5.5%	7.9%	+2.4%
Member of County Assembly	5.1%, 5.7%, 5.8%, 6.1%, or 6.3% depending on which source of data is used.	6.6%	High of +1.7%. low of 0.5% - depending on which data is used for 2013.

### *Women's participation through nomination*

Had the 2010 Constitution not entrenched affirmative action measures, substantial gender representation in the institutions of devolved governance would have been unfathomable. For it was the county assemblies<sup>34</sup> gender top-up formula that helped the legislative institutions to achieve the 2/3 gender threshold. Such a feat remained beyond Parliament – Senate and National Assembly – throughout the first decade of devolution.

After the 2017 General Elections, only 98 women were elected to the county assemblies country-wide through ballot causing 650 women to be nominated. Consequently, nominated MCAs accounted for 87% of all female MCAs countrywide.<sup>35</sup> 670 female MCAs had been elected through nomination following the 2013 General Elections.<sup>36</sup> Since not a single woman was elected by ballot to 12 county assemblies in 2017, including Garissa and Narok,<sup>37</sup> all the female MCAs in those county assemblies

34 Constitution of Kenya (2010), Article 177(1)(b).

35 Rift Valley Institute, 'Taking stock of Kenya's gender principle', 1. As shown above, the data for the 2013 General Elections varies depending on the source.

36 Rift Valley Institute, 'Taking stock of Kenya's gender principle', 1.

37 Kwale, Garissa, Wajir, Mandera, Isiolo, Embu, Kirinyaga, West Pokot, Samburu, Elgeyo Marakwet, Narok and Kajiado did not have a single woman elected to the county assembly. See NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general elections', 31.

were elected through nomination. As Table 5 shows, women comprised 34.00%, 34.83%, 38.10%, 33.33% and 31.91% of the county assemblies of Garissa, Kakamega, Mombasa, Narok and Nakuru, respectively, after the 2017 General Elections. Following both the 2013 and 2017 General Elections, women constituted between 80.0% and 94.1% of the MCAs elected through nomination in the study county assemblies, as seen in Table 4. Clearly, the gender top-up formula enabled all the study county assemblies to comply with the constitutional threshold including Garissa where no single woman was elected through ballot.

Despite the above strengths of the county assembly top-up formula, the conversion rate from nomination to election through ballot at the county assembly level is low, attributed by some studies to the fact that unlike their elected counterparts, nominated MCAs do not represent any specific geographic constituency, thus making it difficult for them to serve effectively in politics and make their mark.<sup>38</sup> The lack of a ward fund or kitty for nominated MCAs, which elected members use for bursaries and infrastructure projects, also creates the impression that elected members are more effective than their nominated counterparts. This affects women disproportionately since they constitute the majority of nominated members.<sup>39</sup>

**Table 4: Election of women by nomination to the study county assemblies**

County	Women			
	2013		2017	
Garissa	16 out of 18	89.9%	16 out of 18	88.9%
Kakamega	25 out of 27	92.6%	25 out of 27	92.6%
Mombasa	12 out of 15	80%	12 out of 15	80%
Nakuru	17 out of 19	89.5%	17 out of 19	89.5%
Narok	16 out of 17	94.1%	16 out of 17	94.1%

38 Marie E Berry, Yolande Bouka and Marilyn Kamuru, 'Implementing inclusion: Gender quotas, inequality, and backlash in Kenya' 17(4) *Politics and Gender* (2021) 640-664; 650-1.

39 Berry and others, 'Implementing inclusion', 651-652.

**Table 5: Composition of the study counties by gender<sup>40</sup>**

County	2013		2017	
Garissa	16 out of 48	33.33%	17 out of 50	34%
Kakamega	29 out of 87	33.33%	31 out of 89	34.83%
Mombasa	25 out of 64	35.56%	16 out of 42	38.10%
Nakuru	25 out of 74	33.78%	26 out of 78	33.33%
Narok	16 out of 47	34.04%	15 out of 47	31.91%

Crucial as the gender top-up formula proved to be in enhancing the participation of women in county politics, and despite clear supporting legislations, a number of county assemblies continued to experience challenges of compliance although the problem appeared to be subsiding.<sup>41</sup> The National Democratic Institute and the Federation of Women Lawyers listed 14 county assemblies<sup>42</sup> that did not comply with the gender top-up formula in 2013 fully, which anomaly reduced markedly to three in 2017 as seen in Figure 8.<sup>43</sup> These notwithstanding, the adage that nomination is the main route to women's political inclusion remains, with 87% of women in the county assemblies in 2017 being elected by nomination (both through the gender top-up and marginalised groups lists).

40 For elected members in 2013 see the Kenya Gazette, CXV (54) 25 March 2013, 3901. For the elected in 2017 members see, Kenya Gazette, CXIX (121) 22 August 2017, 8230; Kenya Gazette, CXIX (123) 25 August 2017, 8378. For the nominated members, in 2013, see the Kenya Gazette, CXV (105) 17 July 2013, 9793. For the nominated members in 2017 see, the Kenya Gazette, CXIX (124) 28 August 2017, 8380 and the corrigenda in the Kenya Gazette, CXIX (13), 16 September 2017, 8752.

41 NDI and FIDA, 'A gender analysis of the 2017 Kenya general elections', 30.

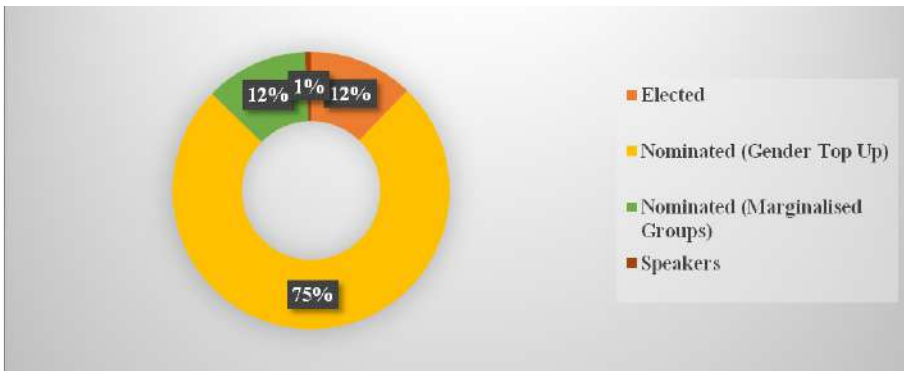
42 See NDI and FIDA, 'A gender analysis of the 2017 Kenya general elections', 31.

43 Narok, Taita Taveta and Trans Nzoia. NDI and FIDA, 'A gender analysis of the 2017 Kenya general elections', 31.

Figure 8 County assemblies' compliance with 2/3 gender rule



Figure 9 Representation of women in county assemblies 2017



In one sense, the top-up formula could be praised for ensuring that the counties either met the 2/3 gender threshold or missed the mark only slightly. On the contrary, the large numbers of women elected through nomination could imply that public confidence in women's leadership is still lacking,<sup>44</sup> and may entrench the narrative that nominated women are not 'real' members or are mere 'bonga points'<sup>45</sup> or 'flower girls' as is usually said in ordinary political parlance.<sup>46</sup> Thus, despite enabling the

44 Cottrell Ghai, 'Women's gains under the new Constitution', 265.

45 Cottrell Ghai, 'Women's gains under the new Constitution', 265. 'Bonga points' are bonus points granted to customers for mobile phone use by one telecom provider.

46 For anecdotal evidence on this see Berry and others, 'Implementing inclusion', 640-664; 650.

majority of county assemblies to meet the 2/3 gender threshold, the fact that women constitute the bulk of nominated MCAs across the country may aggravate an emerging negative narrative.

Compared to the percentage of women in the National Assembly (22%)<sup>47</sup> and in Senate (28%)<sup>48</sup> in the 2017-2022 term, counties realised the 2/3 gender rule nearly fully, which should make the county assemblies' top-up formula part of the conversation as the country seeks compliance with the 2/3 gender threshold in Parliament. Our findings here affirm the significance of affirmative action measures in the quest for gender equality in Kenya, and hopefully such ideas will inspire future legislators as they consider the measures contemplated under Article 100 of the 2010 Constitution.

Parliament's failure to enact the 2/3 gender rule legislation above was the basis for the advice by the then Chief Justice, David Maraga, for the President to dissolve Parliament.<sup>49</sup> The advisory by the Chief Justice, which was issued in accordance with Article 261(7) of the 2010 Constitution, remains the subject of litigation in the High Court, although a separate court order suspended its implementation.<sup>50</sup>

To increase the number of elected women in 2017, strategic litigation by Katiba Institute sought to compel the IEBC to ensure that the political parties complied with the 2/3 gender rule when nominating candidates for the General Elections.<sup>51</sup> This would move the locus of interpretation of the rule from Parliament to political parties. The High Court found

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47 There was a total of 76 women-23 elected MNAs, 47 WMNAs and 6 nominated MNAs.

48 There were 3 women elected and 16 women nominated bringing the total to 19 women senators.

49 Kenya Law, 'Chief Justice's advice to the President on dissolution of Parliament', *Kenya Law Blog*, 22 September 2020.

50 *Leina Konchellah & others v Chief Justice and President of the Supreme Court & others*. Following a suspension of the implementation of the advisory, a five-judge bench was appointed by the Deputy Chief Justice to hear the consolidated petitions.

51 *Katiba Institute v IEBC*, Constitutional Petition 19 of 2017, Judgment of the High Court, (2017) eKLR.

that political parties were obligated to adhere to the 2/3 gender rule, including in nominations and asserted that it was the role of the IEBC to reject nomination lists that did not comply with this rule. However, the implementation of this judgment was deferred to the 2022 General Elections, and suspended further in the cases of *Adrian Kamotho v IEBC*<sup>52</sup> and *Cliff Ombeta & Another v IEBC*,<sup>53</sup> thus clawing back on the gains made in 2017.

The Building Bridges Initiative (BBI) and the consequential Constitution of Kenya (Amendment) Bill 2020 (BBI Bill) had proposed to address the limited representation of women in Parliament. The BBI Bill sought to amend Articles 89 and 97 of the 2010 Constitution to expand the number of constituencies in the National Assembly from 290 to 360.<sup>54</sup> It further proposed to do away with the 47 seats allocated to women representatives in the National Assembly and introduce a top-up system that would create as many special seats as would be necessary to ensure that ‘not more than 2/3 of the members of the National Assembly are of the same gender’.<sup>55</sup> The number of slots available to political parties for nomination of members of special interests groups, including youth, PWDs, and workers, would have reduced from 12 to 6. With regard to the Senate, the proposal was to do away with the 20 slots available for women, youth and PWDs and reconstitute the Senate to comprise of 94 members, with one man and one woman being elected from every county.<sup>56</sup> While the proposed amendments were capable of

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52 *Republic v Public Procurement & Administrative Review Board & 2 others Ex parte Applicant Dar-Yuksel-Ama (a consortium of Dar-Al-Handasah in joint venture with Yukelproje AS & AMA Consulting Engineers Ltd; Korea Express Corporation (KEC) Korea Consultants International Company Limited (KIC) & Apec Consortium Limited & 2 others (interested parties)*, Judicial Review Miscellaneous Application No E071 of 2022, Judgment of the High Court (2022) eKLR.

53 *Katiba Institute v Judicial Service Commission & 2 others; Kenya Magistrates & Judges Association & 2 others*, Constitutional Petition E128 of 2022, Ruling of the High Court, (2022) eKLR.

54 Building Bridges Initiative Bill, Clauses 10 and 13(a)(i).

55 BBI Bill, Clause 13 (a)(iii).

56 BBI Bill, Clause 14 (a)(i).

facilitating the realisation of the 2/3 gender rule, other marginalised groups did not feature in the inclusion discourse prominently, which would have created the danger of double invisibility for the members of these constituent groups.<sup>57</sup> After the Supreme Court upheld the finding of the High Court and Court of Appeal that the BBI Bill was unconstitutional,<sup>58</sup> Article 100 of the 2010 Constitution continues to lack a practical implementation mechanism.

This scenario lends credence to the words of Kenya's former Chief Justice and President of the Supreme Court, Willy Mutunga, in his concurring opinion in *In the Matter of the Speaker of the Senate & Another* that 'constitution-making does not end with its *promulgation*; it continues with its *interpretation*'.<sup>59</sup> Mutunga's further observation that the success of the devolution project to restructure and reorder the State was not guaranteed, and that it had to be 'nurtured, aided, assisted and supported by citizens and institutions' has also been vindicated.<sup>60</sup> Indeed, vigilance through strategic litigation has helped to clarify the extent of the State's obligations in relation to marginalised groups. Strategic litigation on the 2/3 gender rule, specifically on the requirement of legislation by Article 100 to promote the representation of women, youth, PWDs, ethnic and

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57 Purdie-Vaughns and Eibach refer to the double marginalisation among marginalised groups as 'intersectional invisibility'. See Valerie Purdie-Vaughns and Richard P Eibach, 'Intersectional invisibility: The distinctive advantages and disadvantages of multiple subordinate-group identities' 58 *Sex Roles* (2008) 377. In the context of gender equality, Mbote, citing Lombardo and Mieke, concedes that strategies for gender inclusion, while they have been in place longer, do not easily take on board other inequalities. See E Lombardo and Mieke Vierloo, 'Institutionalising intersectionality in the European Union?' *International Feminist Journal of Politics* (2009) 481; cited in Patricia Kameri-Mbote, 'Fallacies of equality and inequality: Multiple exclusions in law and legal discourses' 2013 published in Inaugural Lecture, University of Nairobi, 24 January 2013, 13.

58 *AG & 2 Others v David Ndi & 79 Others*, Supreme Court Petition 12 of 2021, Ruling of the Supreme Court (2022) eKLR.

59 *In the matter of the Speaker of the Senate & another*, Advisory Opinion, Reference No 2 of 2013, [2013] eKLR para 156. Emphasis added.

60 *In the matter of the Speaker of the Senate & another*, para 160.

other minorities and marginalised communities, has provided a basis for holding State actors accountable.<sup>61</sup> But again, the struggle continues.

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61 For the history of litigation on the 2/3 gender rule under the 2010 Constitution, see *In the Matter of Gender Representation in the National Assembly and the Senate* (Supreme Court Advisory Opinion 2 of 2012) on whether Article 27(8) was immediately realisable or subject to progressive realisation; *FIDA Kenya & others v Attorney General and another* (2011) eKLR, which challenged the gender composition of the Supreme Court; *Milka Adhiambo Otieno & another v Attorney General & 2 others*, Kisumu High Court Petition No 44 of 2012 eKLR, which challenged elections to the Kenya Sugar Board for non-compliance with the 2/3 gender principle; *CREAW v Attorney General*, Petition Nos 207 & 208 of 2012 eKLR, which sought to nullify the appointment of county commissioners for non-compliance with the 2/3 gender principle; *National Gender and Equality Commission v IEBC*, High Court Petition 147 of 2013, which challenged the process of allocation of party list seats under Article 90 of the Constitution for, *inter alia*, the exclusion of youth, persons with disabilities and women; *Centre for Rights Education and Awareness (CREAW) v Attorney General & another* (2015) eKLR, which challenged the non-publication of a bill to give effect to Article 100 of the Constitution on representation of marginalised groups in Parliament; *CREAW & others v Speaker of the National Assembly & others*, Constitutional Petition 411 of 2016, which sought to implement Article 261 of the 2010 Constitution to compel Parliament to pass legislation seeking to implement Article 100, otherwise it would stand dissolved. An appeal against the decision of the High Court in this matter was dismissed, (see *Speaker of the National Assembly v CREAW & others*, Civil Appeal 148 of 2017). Following several petitions to the Chief Justice to advise the President to dissolve Parliament under Article 261 (7) of the 2010 Constitution for failure to pass the required legislation under Article 100, the Chief Justice issued an advisory to the President on 21 December 2020. That advisory was challenged in several cases: *Leina Konchellah & Anor v Chief Justice and President of the Supreme Court & Anor* Petition E291 of 2020 (consolidated with Petitions E300 of 2020, E302 of 2020, E305 of 2020, E314 of 2020, E317 of 2020, E337 of 2020, 228 of 2020, 229 of 2020 & JR E1108 of 2020). Following a suspension of the implementation of the advisory, a five-judge bench was appointed by the Deputy Chief Justice to hear the consolidated petitions. The case of *Marilyn Kamuru and two others vs Attorney General and another*, Constitutional Petition 552 of 2012 successfully challenged the violation of the 2/3 gender rule in the appointment of Cabinet secretaries but the declaration of invalidity was suspended. In *Katiba Institute v IEBC* (2017) eKLR, the High Court also asserted the obligation of the IEBC to ensure implementation of the 2/3 gender rule by political parties in the nomination process, with the attendant power to reject non-compliant lists, but the implementation was deferred to the 2022 elections. This decision was later stayed in *Adrian Kamocho v IEBC* JR Misc No E071 of 2022 and the stay upheld in *Cliff Ombeta & Another v IEBC* Constitutional Petition E211 of 2022 (consolidated).



### *Women's participation through appointive positions*

A negative and positive conclusion can be entered regarding women's participation in the Executive during the first decade of devolution. On the negative note, the appointing authorities aimed unambitiously at the 2/3 gender rule rather than at the optimal inclusion of women, with the result that the composition of key Executive institutions wobbled dangerously at the margins of the constitutional threshold both at the national and county levels – invariably. On the positive note, women were appointed to both 'important' and 'inferior' Executive positions contrary to an entrenched view in feminist literature that the important portfolios are usually reserved for the men.

It is arguable that the inclusion of women in the CECs was perfunctory – attempted more because it is a constitutional requirement rather than out of belief in gender equality and women's political leadership. Indeed, most counties operated at the margins of the 2/3 gender rule with the appointment of women dovetailing at around 30% and sometimes falling below the threshold. Women's inclusion averaged at 24% between 2013 and 2017, and 31% between 2017 and 2022 for the county executives nationally. Only 16 counties (about 1/3) complied with the 2/3 gender rule in the composition of their CECs in 2013.<sup>62</sup> Of those counties that satisfied the 2/3 gender rule, women comprised the bare constitutional minimum.<sup>63</sup> However, Kiambu County had the highest representation of women in the County Executive in 2013 at an impressive 86%.<sup>64</sup>

The study counties returned very mixed results with two counties, Mombasa and Narok, showing improvement in the second cycle, Garissa and Nakuru maintaining their initial score, and Kakamega declining.<sup>65</sup>

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62 See FIDA Kenya and NDI, 'A gender audit of Kenya's 2013 election process', 57-58.

63 See FIDA Kenya and NDI, 'A gender audit of Kenya's 2013 election process', 57-58.

64 See FIDA Kenya and NDI, 'A gender audit of Kenya's 2013 election process', 57-58.

65 There is a slight variance in some studies depending on how the figure is computed. For instance, where the governor and deputy governor or county secretary are included in the tally of CECMs, a different math may arise altogether. However,

Mombasa distinguished itself between 2017 and 2022, when women accounted for 43% of the CECM positions, up from (30%) between 2013 and 2017. Narok had fallen below par in 2013, when women comprised only 22.2% of the CEC (two out of nine), but rose marginally to three out of ten (30%) in 2017. Garissa kept the women at three out of a maximum of ten – 30% – in both electoral cycles. Nakuru County trod along the margins of the 2/3 gender rule, nominating three women out of ten (30%) in 2013 and maintaining the same number in 2017. Kakamega complied with the 2/3 gender rule in 2013, when women comprised 44.4% of the CECMs, plus a female County Secretary, Dr Makanga Savana. This went down in 2017 to a paltry two women (20%). However, after a reshuffle in 2020, the number of women increased to three, at the margins of the 2/3 gender rule, and a woman, Jacinta Adhiambo, was appointed County Secretary.

At the National Executive, compliance with the 2/3 gender rule was low, with only 27% and 28% of appointees to the Cabinet being female between 2013 and 2017, and 2017 and 2022 respectively.<sup>66</sup> The above county and national statistics support our deduction that the President and the governors accepted the 2/3 gender rule as their general compass for Cabinet and CECMs appointments (respectively) although this did not prevent them from missing the mark sometimes.<sup>67</sup>

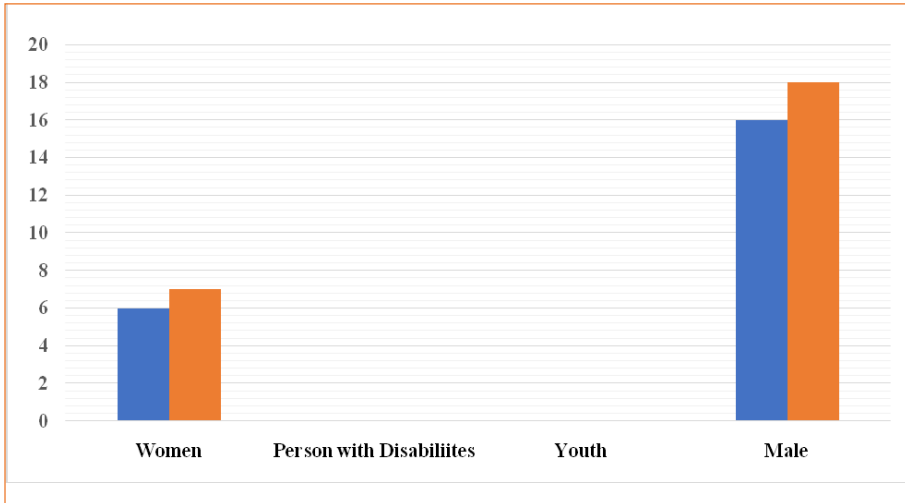
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these differences in approach do not alter the figures and argument fundamentally. For slightly different statistics, please see FIDA Kenya and NDI, 'A gender audit of Kenya's 2013 election process', 57-58. Also, Cottrell Ghai 'Women's gains under the new Constitution' 268.

66 See Cottrell Ghai 'Women's gains under the new Constitution' 268. Due to a Cabinet reshuffle in 2015, the Devolution and Planning docket was taken over by a man and again in 2021, the Ministry of Defence changed from being headed by a woman to being headed by a man. Some ministries were also reconstituted for instance, the Ministry of Gender and Public Affairs became the Ministry of Public Service, Gender, Senior Citizens Affairs & Special Programmes. See Derrick Okubasu, 'Reshuffle: Full list of Uhuru Kenyatta's new 2020 Cabinet', 16 January 2022 and the presidency, 'Reassignments changes in Cabinet', 29 September 2021.

67 This was the finding in similar studies such as FIDA Kenya and NDI, 'A gender audit of Kenya's 2013 election process', 57; NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general elections', 33. Cottrell Ghai 'Women's gains under the new Constitution', 268.

Figure 10 Representation of women, youth and PWDs in Cabinet 2013-2022



The ministries or departments women managed at both the national and county levels were diverse, ranging from those considered inferior to those thought to be important.<sup>68</sup> According to feminist studies, women tend to be assigned inferior or powerless portfolios, which are often dichotomised along the gender roles. Thus, since women are thought to be ‘caregivers’, they are likely to be assigned departments like social services, which are arguably less significant either by the importance assigned to them or the budgets allotted to them.<sup>69</sup> This feminist hypothesis holds that highly regarded portfolios such as finance and infrastructure are usually the privilege of men.<sup>70</sup> Without belittling feminist literature on gender roles, there is a place in our study for challenging the supposed gender roles and their effect on the positions women occupy. For instance, women are usually seen as

68 For a similar finding, see NDI and FIDA Kenya, ‘A gender analysis of the 2017 Kenya general elections,’ 32.

69 Rift Valley Institute, ‘Taking stock of Kenya’s gender principle,’ 3; For a deeper analysis of such literature see, Mona Lena Krook and Diana Z O’Brien, ‘All the President’s men? The appointment of female Cabinet ministers worldwide’ 74(3) *Journal of Politics* (2012) 840-55.

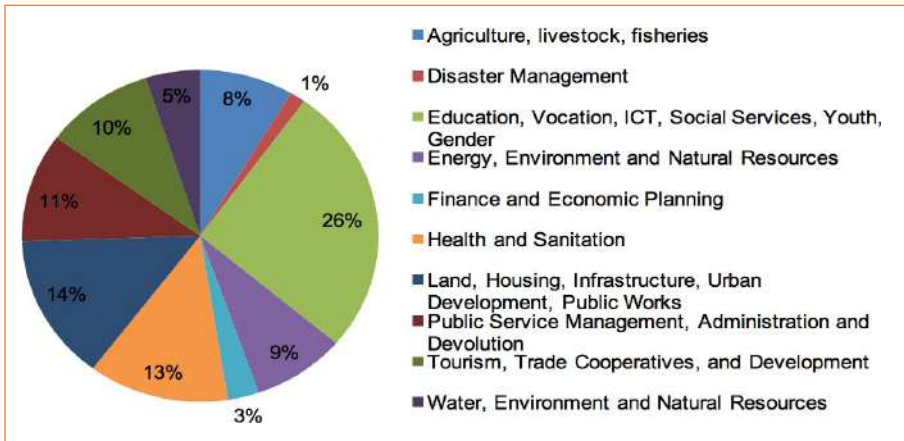
70 Krook and O’Brien, ‘All the President’s men? The appointment of female Cabinet ministers worldwide’, 840, 841, 846.

the goddesses of water, queens of fire (forestry), lords of the environment (environment), farm magicians (agriculture), and family caregivers (health), among others, which might mean that no field is beyond their reach realistically speaking. Indeed, contrary to the feminist view on gender roles, as table 6 shows, the women Cabinet secretaries were assigned influential ministries like Energy, Devolution and Planning, Lands and Housing, Foreign Affairs, Health, and even Defence, which are usually considered the exclusive province of men.

**Table 6: National Cabinet positions occupied by women 2013-2022<sup>71</sup>**

2013-2017	2017-2022
Foreign Affairs	Water and Sanitation and Irrigation
East African Affairs, Commerce and Tourism	Sports and Heritage
Environment, Water and Natural Resources	Lands
Lands, Housing and Urban Development	Energy
Defence	Public Service and Gender Affairs
Devolution and Planning	Foreign Affairs
Public Service, Youth and Gender Affairs	Industrialisation, Trade and Enterprise Development

71 Due to Cabinet reshuffle in 2015 the Devolution and Planning docket was taken over by a man and again in 2021, the Ministry of Defence changed from being headed by a woman to being headed by a man. Some ministries were also reconstituted, for instance, the Ministry of Gender and Public Affairs became the Ministry of Public Service, Gender, Senior Citizens Affairs & Special Programmes, see, Winfred Owino, 'President Uhuru Kenyatta makes Cabinet changes', *Saturday Standard*, 28 September 2021.

Figure 11: Portfolios held by women in CECs, 2013-2017<sup>72</sup>

Like at the national level, in the study counties, women took up roles that have traditionally been assumed to be important, and set aside for men. Both in 2013 and 2017, women occupied three ministerial positions per study county on average, and the positions included both the 'important' and 'inferior' portfolios. The 'important' dockets in this regard were: Education and Labour; Environment, Forestry and Tourism; and Agriculture, Livestock and Fisheries. The 'inferior' ones included Gender, Social Services and Sports; Children Affairs, Social Welfare and Women Empowerment; and Culture and Intercommunity Affairs.

Health is one of the main devolved functions under the Fourth Schedule of the 2010 Constitution. In Kakamega County, a lot of emphasis was placed on this mandate, going by the annual budget of the County and the projects realised.<sup>73</sup> Agriculture is another major

72 Rift Valley Institute, 'Taking stock of Kenya's gender principle', 3.

73 The health docket houses Kakamega's 'most innovative' project, the *Oparanya Care*. See County Government of Kakamega, 'County re-launches imarisha afya ya mama na mtoto programme', 29 October 2022; <<https://oparanyacare.com/our-work/>>; Kakamega County, County Annual Development Plan (CADP) financial year 2022/2023, 60; the health docket also has a higher development expenditure budgetary allocations compared to other dockets, ranging from 12.1% (Ksh 624,340,000) in

county function and special focus of Kakamega County. Kakamega County's Integrated Development Plan (CIDP), 2018-2022, prioritised food security, road network, universal health care and education, access to clean and safe water and manufacturing. Science and technology are also usually seen as a male domain. That Kakamega County assigned women these responsibilities could imply a new understanding of gender roles. Similarly, that Garissa and Narok, both with a significant population of pastoralists, who regard livestock highly and as a male affair,<sup>74</sup> entrusted women to head the agricultural docket is a major achievement for the gender inclusivity discourse.

**Table 7: Gender representation in the County Executive Committee Kakamega County**

POSITION	2013	2017
Governor	M	M
Deputy Governor	M	M

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2014/2015, 19.4% (Ksh 1,139,430,000) in 2015/2016, 20.2% (Ksh 1,273,250,000) in 2016/2017, (Ksh 1,709,570,000), in 2017/2018 and 19.7% (1,339,000,000) in 2018/2019. See the Office of the Controller of Budget's County Governments Annual Budget Implementation Review Reports for each financial year available at <<https://cob.go.ke/reports/consolidated-county-budget-implementation-review-reports/>> on 1 October 2022).

- 74 Narok County Integrated Development Plan (2018-2022), 19; Patrick Mwambi Mwanyumba, Raphael Wahome Wahe, Labban MacOpiyo and Kanyari, 'Livestock herd structures and dynamics in Garissa County Kenya', 5(26) *Pastoralism* (2015); See <<https://resilience.go.ke/>>, on 1 October 2022, where Narok and Garissa are among the counties listed as project areas for the National Government's Regional Pastoral Livelihoods Resilience Project (RPLRP-Kenya), which is a World Bank aided project, with the objective of enhancing livelihoods resilience of pastoral and agro pastoral communities in cross border drought prone areas. See also Edwin Ambani Ameso, SA Bukachi, CA Olunga, T Maller, S Wandibba and S Nange, 'Pastoral resilience among the Maasai pastoralists of Laikipia County, Kenya', 7(2) *Land*, (2018) 6; Naomi Kipuri and Andrew Ridgewell, 'A double bind: The exclusion of pastoralist women in the East and Horn of Africa' *Minority Rights Group International* (2008) 3.

Committee	2013 <sup>75</sup>	2017/2018 <sup>76</sup>	2020 <sup>77</sup>
Office of the Governor, Public Service and Administration	F	F	F
Health Services	F	F	M
Environment, Natural Resources, Water and Forestry	F	M	M
Education, Science and Technology and ICT	F	N/A <sup>78</sup>	N/A <sup>79</sup>
County Treasury and Economic Planning	M	N/A <sup>80</sup>	N/A <sup>81</sup>

75 Kenya Gazette, CXV (108) 23 July 2013, 10159.

76 County Government of Kakamega, 'List of county executive members (CEC), chief officers (CO) and other senior officers as announced by HE Governor Wycliffe Ambetsa Oparanya', 31 January 2018.

77 Kenya Gazette Notice CXXII (150) 7 August 2020, 5478.

78 The Education, Science and Technology and ICT Committee did not exist as named after 2017. In 2017-2022, ICT was placed under the Committee on Finance, Economic Planning, ICT, e-Government and Communication. Education, Science and Technology was constituted under its own docket named the Committee on Education, Science and Technology. See, County Government of Kakamega, 'List of county executive members (CEC), chief officers (CO) and other senior officers as announced by HE Governor Wycliffe Ambetsa Oparanya', 31 January 2018 and Kenya Gazette Notice CXXII (150), 7 August 2020, 5478.

79 The Education, Science and Technology and ICT Committee did not exist as named after 2017. In 2017-2022, ICT was placed under the Committee on Finance, Economic Planning, ICT, e-Government and Communication. Education, Science and Technology was constituted under its own docket named the Committee on Education, Science and Technology. See County Government of Kakamega, 'List of county executive members (CEC), chief officers (CO) and other senior officers as announced by HE Governor Wycliffe Ambetsa Oparanya', and Kenya Gazette Notice CXXII (150) 7 August 2020, 5478.

80 The 'County Treasury and Economic Planning' Committee was reconstituted in the period 2017-2022 as the Committee on Finance, Economic Planning, ICT, e-Government and Communication. See County Government of Kakamega, 'List of county executive members (CEC), chief officers (CO) and other senior officers as announced by HE Governor Wycliffe Ambetsa Oparanya', and Kenya Gazette Notice CXXII (150) 7 August 2020, 5478.

81 The County Treasury and Economic Planning Committee was reconstituted in 2017 as the Committee on Finance, Economic Planning, ICT, e-Government and Communication. See County Government of Kakamega, 'List of county executive members (CEC), chief officers (CO) and other senior officers as announced by HE

Transport, Infrastructure and Public Works	M	N/A <sup>82</sup>	N/A <sup>83</sup>
Labour, Social Services, Culture, Youth and Sports	M	N/A <sup>84</sup>	N/A <sup>85</sup>
Industrialisation, Trade and Tourism	M	M	M
Lands, Housing, Urban Areas and Physical Planning	M	M	M
Finance, Economic Planning, ICT, e-Government and Communication	N/A <sup>86</sup>	M	F

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Governor Wycliffe Ambetsa Oparanya’, and the Kenya Gazette Notice CXXII (150) 7 August 2020, 5478.

- 82 The Transport, Infrastructure and Public Works Committee was reconstituted as the Committee on Roads, Energy and Public Works. See County Government of Kakamega, ‘List of county executive members (CEC), chief officers (CO) and other senior officers as announced by HE Governor Wycliffe Ambetsa Oparanya’, and the Kenya Gazette Notice CXXII (150) 7 August 2020, 5478.
- 83 The Transport, Infrastructure and Public Works Committee was reconstituted as the Committee on Roads, Energy and Public Works. See County Government of Kakamega, ‘List of county executive members (CEC), chief officers (CO) and other senior officers as announced by HE Governor Wycliffe Ambetsa Oparanya’, and Kenya Gazette Notice CXXII (150) 7 August 2020, 5478.
- 84 The Labour, Social Services, Culture, Youth and Sports Committee was reconstituted in 2017. In 2017-2022, labour was scrapped, women empowerment included, to constitute the Committee on ‘Social Services, Sports, Youth, Women Empowerment and Culture’. See County Government of Kakamega, ‘List of county executive members (CEC), chief officers (CO) and other senior officers as announced by HE Governor Wycliffe Ambetsa Oparanya’, and Kenya Gazette Notice CXXII (150) 7 August 2020, 5478.
- 85 The Labour, Social Services, Culture, Youth and Sports Committee did not exist as named after 2017. In 2017-2022, labour was scrapped, women empowerment included, to constitute the Committee on Social Services, Sports, Youth, Women Empowerment and Culture. See County Government of Kakamega, ‘List of county executive members (CEC), chief officers (CO) and other senior officers as announced by HE Governor Wycliffe Ambetsa Oparanya’, and Kenya Gazette Notice CXXII (150) 7 August 2020, 5478.
- 86 The docket as named, did not exist as of 2013. In 2013, there was the Committee on County Treasury and Economic Planning. See Kenya Gazette, Gazette Notice, CXV (108) 23 July 2013, 10159.



ICT, e-Government and Communication	N/A <sup>87</sup>		M		N/A <sup>88</sup>	
Roads, Energy and Public Works	N/A <sup>89</sup>		M		M	
Education, Science and Technology	N/A <sup>90</sup>		M		M	
Social Services, Sports, Youth, Women Empowerment and Culture	N/A <sup>91</sup>		M		M	
Agriculture, Irrigation, Co-operatives, Livestock, Veterinary Services and Fisheries	M <sup>92</sup>		M		F	
<b>TOTAL MALES</b>	<b>4</b>	<b>40%</b>	<b>9</b>	<b>82%</b>	<b>7</b>	<b>70%</b>
<b>TOTAL FEMALES</b>	<b>6</b>	<b>60%</b>	<b>2</b>	<b>18%</b>	<b>3</b>	<b>30%</b>
<b>SUM TOTAL</b>	<b>10</b>		<b>11</b>		<b>10</b>	

87 The docket as named, did not exist in 2013. In 2013, ICT was under the Committee on Education, Science and Technology and ICT. See Kenya Gazette, Gazette Notice, CXV (108) 23 July 2013, 10159.

88 The ICT, e-Government and Communication Committee did not exist as of 2020. See the Kenya Gazette Notice, CXXI (150), 7 August 2020, 5478.

89 The docket as named did not exist in 2013. In 2013, there was the Committee on Transport, Infrastructure and Public Works. See the Kenya Gazette, Gazette Notice, CXV (108) 23 July 2013, 10159.

90 The docket as named, did not exist in 2013. In 2013, the docket included ICT, and was called the Committee on Education, Science and Technology and ICT. See the Kenya Gazette, Gazette Notice, CXV (108) 23 July 2013, 10159.

91 The docket as named, did not exist as of 2013. In 2013, there was a committee on Labour, Social Services, Culture, Youth and Sports. See the Kenya Gazette, CXV (108) 23 July 2013, 10159.

92 Kenya Gazette, CXVII (20) 27 February 2015, 1236.

**Table 8: Gender representation in the County Executive Committee of Garissa County**

POSITION	2013	2017
Governor	M	M
Deputy Governor	M	M
Committee	2013 <sup>93</sup>	2017 <sup>94</sup>
Environment, Forestry and Tourism	M	N/A <sup>95</sup>
Environment, Energy and Natural Resources	N/A <sup>96</sup>	F
Commerce and Co-operative Development	M	N/A <sup>97</sup>
Trade, Enterprise Development and Tourism	N/A <sup>98</sup>	M
Health, Water Services and Sanitation	M	N/A <sup>99</sup>
Health and Sanitation Services	N/A <sup>100</sup>	M
Water and Irrigation	N/A <sup>101</sup>	M
Finance and Economic Planning	M	M
Children Affairs, Social Welfare and Women Empowerment	F	N/A <sup>102</sup>
Gender, Social Services and Sports	N/A <sup>103</sup>	F

93 Kenya Gazette CXV (85) 7 June 2013, 7502.

94 Kenya Gazette, CXIX (169) 13 November 2017, 5884; Kenya Gazette, CXIX (194) 29 December 2017, 12719.

95 The Tourism docket was moved to Trade, Enterprise Development and Tourism, a committee formed in 2017.

96 A Natural Resources docket was introduced to the Committee on Environment, Energy and Natural Resources.

97 This docket was scrapped in 2017.

98 Trade, Enterprise Development and Tourism was created after merging Tourism docket and Commerce and Co-operative Development Committee.

99 In 2017, the Health, Water Services and Sanitation docket was split into Health and Sanitation Services and Water and Irrigation Services.

100 Health and Sanitation Services was under the bigger docket, Health, Water Services and Sanitation in 2013.

101 The Committee of Water and Irrigation was formed in 2017. The Water docket was formerly under Health, Water Services and Sanitation.

102 Children Affairs, Social Welfare and Women Empowerment and the Sports docket which was under the Committee on Education, Youth Polytechnic and Sports were merged to create the Committee on Gender Social Services and Sports in 2017.

103 Gender, Social Services and Sports were under Children Affairs, Social Welfare and Women Empowerment and the Committee on Education, Youth Affairs and Sports.

Education, Youth Polytechnic and Sports	M		N/A <sup>104</sup>
Education and Labour	N/A <sup>105</sup>		F
Land, Housing Development and e-Government	M		M
Agriculture, Livestock and Fisheries	F		M
Culture and Intercommunity Affairs	F		N/A <sup>106</sup>
Infrastructure and Public Works	M		N/A <sup>107</sup>
Roads and Transport	N/A <sup>108</sup>		M
<b>TOTAL MALES</b>	<b>7</b>	<b>70%</b>	<b>7</b> <b>70%</b>
<b>TOTAL FEMALES</b>	<b>3</b>	<b>30%</b>	<b>3</b> <b>30%</b>
<b>SUM TOTAL</b>	<b>10</b>		<b>10</b>

Between 2013 and 2017, the portfolios assigned to women in Mombasa County were two 'less important' ones and an important one given the urban and coastal context of the County and going by the above discussion on gender roles. The 'less important' ones were Agriculture, Livestock and Marketing, and Sports, Youth and Culture; while the important one was Water, Environment and Natural Resources. However, after the 2017 General Elections, women were assigned more 'important' portfolios like Finance and Economic Planning, and Health, although, as we have already argued, the Health docket could also be seen as a typical feminine role of caregivers despite being a key devolution mandate.

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104 The docket was changed in 2017. Committees introduced to replace them were Education and Labour and Gender, Social Services and Sports.

105 This docket was derived from Education, Youth Services and Sports which existed in 2013.

106 This docket was scrapped in 2017.

107 The Department of Infrastructure and Public Works was reduced into Roads and Transport.

108 This Department was under the Infrastructure and Public Works in 2013.

**Table 9: Gender representation in the County Executive Committee of Mombasa County**

POSITION	2013	2017	
Governor	M	M	
Deputy Governor	F	M	
Committee	2013 <sup>109</sup>	2017 <sup>110</sup>	
Tourism Development	M	N/A <sup>111</sup>	
Transport and Infrastructure	M	M	
Finance and Economic Planning	M	F	
Health	M	F	
Education	M	N/A <sup>112</sup>	
Agriculture, Livestock and Marketing	F	N/A <sup>113</sup>	
Trade, Energy and Industry	M	N/A <sup>114</sup>	
County Planning, Land and Housing	M	M	
Sports, Youth and Gender	F	M	
Water, Environment and Natural Resources	F	N/A <sup>115</sup>	
Environment, Waste Management and Energy	N/A <sup>116</sup>	M	
Water, Sanitation and Natural Resources	N/A <sup>117</sup>	F	
<b>TOTAL MALES</b>	<b>7</b>	<b>70%</b>	<b>4</b> <b>57%</b>
<b>TOTAL FEMALES</b>	<b>3</b>	<b>30%</b>	<b>3</b> <b>43%</b>
<b>SUM TOTAL</b>	<b>10</b>		<b>7</b>

109 Kenya Gazette, CXV (78) 24 May 2013,7087; Kenya Gazette, CXV (108) 23 July 2013, 10156; Kenya Gazette, CXV (99) 5 July 2013; Kenya Gazette, CXV (99) 5 July 2013, 9087.

110 Kenya Gazette, CXIX (171) 17 November 2017, 5926.

111 This Department did not exist in 2017.

112 The Education Department did not exist in 2017.

113 This Department did not exist in 2017.

114 This Department did not exist in 2017: The Energy docket was merged into the Environment, Waste Management and Energy Department.

115 Merged into the Water, Sanitation and Natural Resources Department in 2017.

116 This docket was non-existent in 2013. It was reconstituted with the Energy docket of the Trade, Energy and Industry Department from 2013 as well as the Environment aspect of the Water, Environment and Natural Resources.

117 This Department did not exist in 2013. In its place was the Water, Environment and Natural Resources Department.

Nakuru also presents a mixture, having assigned women the traditional ‘women departments’ like Culture, Youth and Social Services in 2013, and Youth, Culture and Social Services in 2017, while at the same time also entrusting them with important dockets such as Land, Physical Planning and Housing (in both 2013 and 2017), and Agriculture and Fisheries in 2013.

**Table 10: Gender representation in the County Executive Committee of Nakuru County**

POSITION	2013	2017	
Governor	M	M	
Deputy Governor	M	M	
Committee		2013 <sup>118</sup>	2017 <sup>119</sup>
Finance and Planning		M	M
Roads, Public Works and Transport		M	N/A <sup>120</sup>
Natural Resource, Environment, Water and Wildlife Management		M	M
Trade, Industrialisation, Tourism and Wildlife Management		M	M
Lands, Physical Planning and Housing		F	F
Agriculture, Livestock and Fisheries		M	F
Education, Culture, Youth and Social Services		F	N/A <sup>121</sup>
Information Communication Technology and e-Government		M	N/A <sup>122</sup>
Infrastructure		N/A <sup>123</sup>	M

118 Kenya Gazette, CXV (82) 31 May 2013, 2949; Kenya Gazette, CXV (167) 29 November 2013, 14932.

119 Kenya Gazette, CXIX (190) 22 December 2017, 6570.

120 This Department did not exist in 2017. Its functions were merged into the Department on Infrastructure in 2017.

121 This Department was reconstituted into the Youth, Gender, Culture, Sports and Social Services Department in 2017.

122 This Department was reconstituted into the Education, ICT and e-Government Department in 2017.

123 The Infrastructure Department did not exist in 2013. The functions of this Department in 2013 were performed by the Roads, Public Works and Transport Department.

Public Service	F		N/A <sup>124</sup>
Public Service and Devolution	N/A <sup>125</sup>		M
Health Services	M <sup>126</sup>		M
Youth, Gender, Culture, Sports and Social Services	N/A <sup>127</sup>		F
Education, ICT and e-Government	N/A <sup>128</sup>		M
<b>TOTAL MALES</b>	<b>7</b>	<b>70%</b>	<b>7</b> <b>70%</b>
<b>TOTAL FEMALES</b>	<b>3</b>	<b>30%</b>	<b>3</b> <b>30%</b>
<b>SUM TOTAL</b>	<b>10</b>		<b>10</b>

In Narok as well, the assigned roles overlapped on both sides of the gender roles divide. While women held important ministries like Finance and Economic Planning, and Information, Communication and e-Government (in 2013), Agriculture, Livestock and Fisheries, in a predominantly pastoralist community, and Lands, Physical Planning and Urban Development in a county where significant acreage of land has been rated (in 2017). Education, Youth Affairs, Gender, Culture and Social Services, which a woman held between 2017 and 2022, combines important departments like Education and inferior ones like Youth Affairs, Gender, Culture and Social Services.

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124 This Department was reconstituted in 2017 to include the devolution docket under its mandate.

125 This Department existed purely to cater for public service matters in 2013. It was reconstituted in 2017 to include devolution under its mandate.

126 Kenya Gazette, CXVI (112) 19 September 2014.

127 The education docket was removed after the committee was reconstituted from the 2013 Education, Culture, Youth and Social Services Department and moved to Education, ICT and e-Government.

128 This Department was reconstituted from the 2013 Information Communication Technology and e-Government Department after the education docket was added.

**Table 11: Gender representation in the County Executive Committee of Narok County**

POSITION	2013	2017	
Governor	M	M	
Deputy Governor	M	F	
Committee	2013 <sup>129</sup>		2017 <sup>130</sup>
Finance and Economic Planning	F		M
Agriculture, Livestock and Fisheries	M		F
Trade, Industrialisation, Co-operative Development, Tourism and Wildlife	M		N/A <sup>131</sup>
Trade, Industrialisation and Cooperative Development	N/A <sup>132</sup>		M
Tourism and Wildlife	N/A <sup>133</sup>		M
Health and Sanitation	M		M
Education, Youth Affairs, Gender, Culture and Social Service	M		F
Lands, Physical Planning and Urban Development	M		F
Public Works, Roads and Transport	M		M
Public Service Management	M		M
Information, Communication and e-Government	F		N/A <sup>134</sup>
Water, Energy, Environment and Natural Resources	N/A <sup>135</sup>		M

129 Kenya Gazette, CXV (147) 11 October 2013, 4944.

130 Office of the Auditor General, 'Report of the Auditor General on county executive of Narok' 30 June 2019.

131 This docket was non-existent as the name of the Department at the time was reconstituted to Trade, Tourism and Industry. See also Office of the Auditor General, 'Report of the Auditor General on county executive of Narok' 30 June 2019.

132 This docket was non-existent as the name of the Department at the time was reconstituted to Trade, Industrialisation and Cooperative Development, Tourism and Wildlife. See also Kenya Gazette, CXV-(147) 11 October 2013.

133 This docket was non-existent as the Department at the time was reconstituted to Trade, Industrialisation and Cooperative Development, Tourism and Wildlife Department. See also Kenya Gazette, CXV (147) 11 October 2013, 4944.

134 This docket was non-existent in 2013 but was introduced in 2017. See Office of the Auditor General, 'Report of the Auditor General on county executive of Narok', 30 June 2019, iii.

135 This docket was introduced in 2017. See the Kenya Gazette CXV (147) 11 October 2013.

It is possible to criticise the President and the governors for appointing fewer women to the Cabinet and CECs (respectively) than constitutionally required; however, these appointing authorities cannot be accused of assigning women only the lesser important ministries or departments. It would also be wilful blindness<sup>136</sup> to fail to acknowledge that the number of women in the Executive has grown incrementally since the first woman was appointed in 1974, and that the dockets held have increasingly moved from the traditional gender roles to more important roles.<sup>137</sup>

### *Women's participation through leadership of legislative institutions*

The first decade of devolution saw women take up influential leadership roles in legislative institutions at both the county and national levels albeit rarely as the cases of the offices of speaker and deputy speaker illustrate. The study county assemblies did not fare well in having women at the helm. As table 12 indicates, with the exception

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136 Wilful blindness causes an excluded group to persistently view itself as a victim, without acknowledging areas where the group experiences privilege or where it has agency. According to Hancock, the proponent of this theory, wilful blindness ignores the fact that membership to a marginalised or privileged group does not remain static over time. See Ange-Marie Hancock, *Solidarity politics for millennials: A guide to ending the Oppression Olympics*, Palgrave Macmillan, 2011, 3.

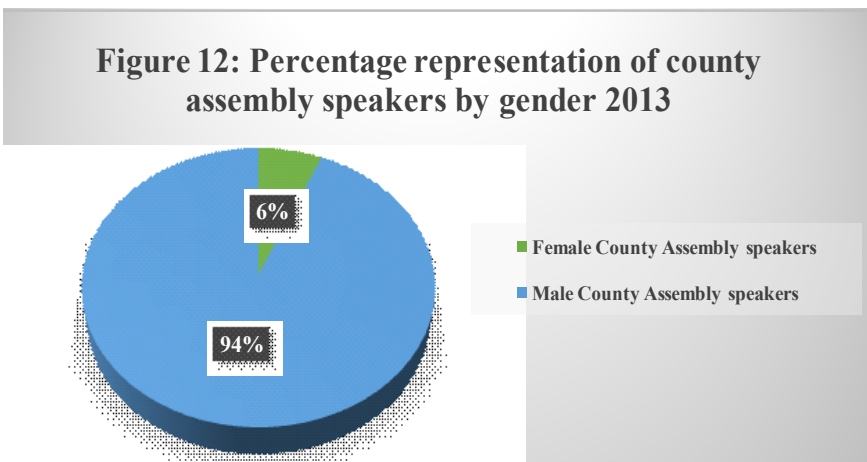
137 When the first woman, Dr Julia Ojiambo was appointed in 1974, she served as an Assistant Minister for Housing and Social Services; between 1995 and 1998, Hon Nyiva Mwendwa became the first woman appointed Minister of Culture and Social Services. When the NARC Government came to power in 2002, seven women held Cabinet positions: three Cabinet ministers and four assistant ministers. The Grand Coalition Cabinet of 2008 fared poorly on gender with only 7 out of 44 Cabinet ministers being women. However, in 2013, Uhuru Kenyatta appointed seven women out of a Cabinet of 22 members – the highest proportion since independence, and a number representing almost one-third of the total Cabinet seats. The same number was appointed in 2017. The appointments were even more remarkable considering that the women were appointed to dockets that were previously considered the preserve of men. See Figure 15 above; see also FIDA Kenya and NDI, 'Key gains and challenges: A gender audit of Kenya's 2013 election process', 2.



of Nakuru County Assembly, which elected a female Speaker in 2013, all the other speakers and deputy speakers of the study county assemblies were male in both cycles under study. Nationally, the number of women county assembly speakers increased from only three (6.4%) in 2013 (Kirinyaga, Kisumu and Nakuru) to five (10.6%) in 2017 (Homa Bay, Machakos, Nairobi, Vihiga, and West Pokot)<sup>138</sup> as figures 12 and 13 demonstrate.

Similarly, at the national level, besides Dr Laboso who served as the Deputy Speaker of the National Assembly between 2013 and 2017, no other woman rose to the rank of Speaker or Deputy Speaker in Parliament. However, Naomi Shabaan served as Deputy Majority Leader of the National Assembly while Hon Beatrice Elachi served as Majority Chief Whip in the Senate between 2013 and 2017. Additionally, Aisha Jumwa and Susan Kihika served as Deputy Minority Whip in the National Assembly and Majority Whip of the Senate, respectively, between 2017 and 2020. Therefore, although women are getting into the legislative institutions increasingly, their influence at the top levels is only beginning to be felt.

Figure 12 Percentage representation of county assembly speakers by gender 2013



138 NDI and FIDA Kenya, 'A gender analysis of the 2017 Kenya general elections', 33.

Figure 13 Percentage representation of county assembly speakers by gender 2017

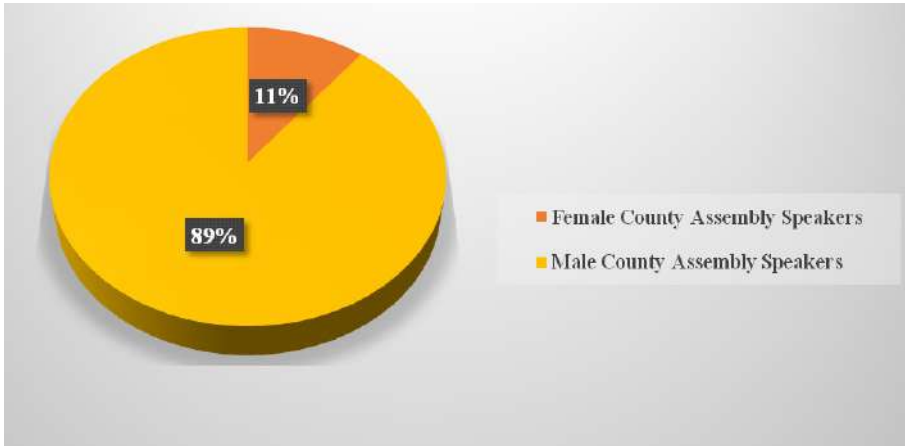


Table 12: Speakership of study county assemblies by gender, 2013-2022

COUNTY	2013		2017	
	Speaker	Deputy Speaker	Speaker	Deputy Speaker
Garissa	M	M	M	M
Kakamega	M	M	M	M
Mombasa	M	M	M	M
Nakuru	F	M	M	M
Narok	M	M	M	M
TOTAL MALES	4	5	5	5
TOTAL FEMALES	1	0	0	0
SUM TOTAL	5	5	5	5

**Table 13: County assembly leadership in the study counties (2013)**

County	Position				
	Majority Leader	Minority Leader	Majority Whip	Minority Whip	Clerk
Kakamega	M	M	M	M	M
Garissa	M	M	M	M	M
Nakuru	M	M	M	M	M
Narok	M	M	M	M	M
Mombasa	M	M	M	F	F

**Table 14: County assembly leadership in the study counties (2017)**

County	Position				
	Majority Leader	Minority Leader	Majority Whip	Minority Whip	Clerk
Kakamega	M	M	M	M	M
Garissa	M	M	M	F	M
Nakuru	M	M	M	F	M
Narok	M	M	M	M	M
Mombasa	M	F	F	M	M

*Figure 14 Representation of women, youth and PWDs in leadership of committees of the National Assembly*

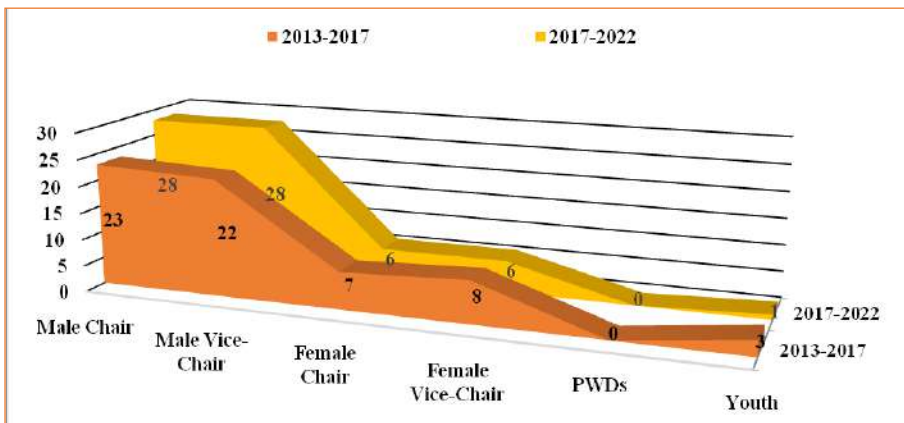
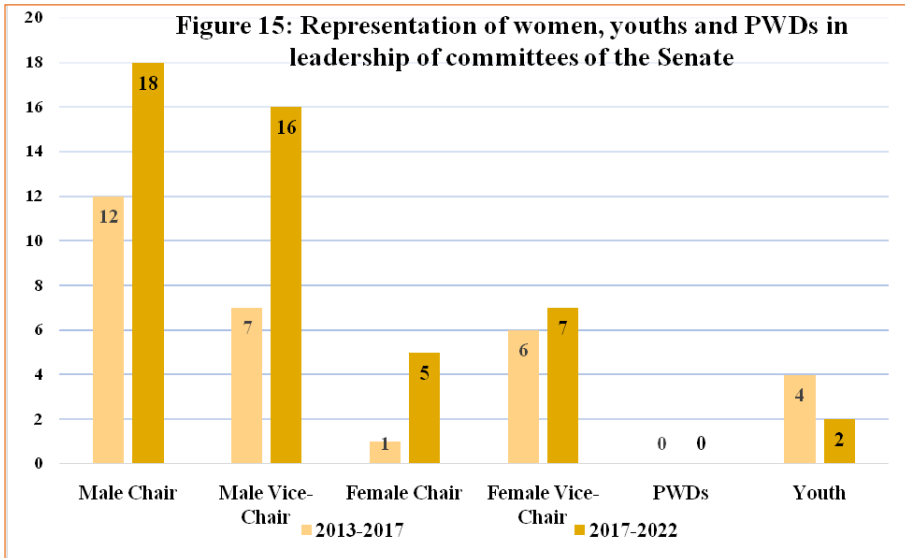


Figure 15 Representation of women, youths and PWDs in leadership of committees of the Senate



*Women’s participation in legislative committees*

With respect to the leadership of legislative committees, women actually took charge of committees and in fact chaired important committees such as Education, Science and Technology; Justice and Legal Affairs; Roads and Infrastructure, among others. However, their participation was minimal numerically as the case studies show.

In Garissa, women chaired four committees post-2017, initially, although they lost the leadership of three of them with the reconstitution of committees in 2019. Yet again mid-way transition was critical and this time women lost. Still, the high number of four committee chairs was curious for Garissa in light of the fact that throughout the study period all the women in the County Assembly were nominated. The failure to elect women in Garissa painted a picture of an electorate that was reluctant to accept the leadership of women; however, the fact that once nominated the women could be entrusted with the leadership of critical assembly committees wrote a different image on that canvas.

In Mombasa, women chaired three committees post-2017 - Water; Transport; and Sanitation and Natural Resources. In Kakamega, both post-2013 and 2017, women chaired three committees - Education; Health; and Delegated Legislation (2013); and Environment; Education; and Procedure and Regulation in 2017. In Nakuru, post-2013, eight women chaired committees, while 25% of the committees in 2017 were chaired by women.<sup>139</sup> It is noteworthy that women MCAs in Nakuru held the positions of Deputy Leader of Majority, Minority Whip and Deputy Minority Whip.<sup>140</sup> In Narok, only one woman chaired a committee, the Culture Committee, post-2013. Again, between 2017 and 2022, only one woman chaired a committee - the Powers and Privileges Committee.

**Table 15: 2017 Women-led committees in the county assemblies of the study counties**

County	Committee	Names	Designation
Garissa <sup>141</sup>	Roads, Transport and Public Works	Marian Mohamed	Chair
	Trade, Enterprise Development and Tourism	Asli Ibrahim	Chair
	Labour, Gender, Social Services and Sports Committee	Fatuma Abdi Sanweiyana	Chair
	Land, Housing and Urban Development Committee	Shindes Mohamud	Chair
Kakamega	Labour, Social Services, Culture, Youth and Sports	Winny Musungu <sup>142</sup>	Chair

139 It is noteworthy that four women also served as vice-chairs of committees including ICT, Justice and Legal Affairs, Finance and Planning and Trade, Tourism and Cooperatives.

140 <<https://assembly.nakuru.go.ke/web/about-assembly/county-assembly-members/>> on 5 September 2022.

141 These women did not serve a full term as the committees were reconstituted during the term and all women lost leadership roles in the committees of the assembly.

142 Hon Winny Musungu was replaced by a man, Hon Jason Lutomia in 2020.

<b>Mombasa</b>	Justice and Legal Affairs Committee	Amriya Boy Juma	Chair
	Committee on County Delegated Legislation	Lucy Chizi Chireri	Chair
	Transport Committee	Joyce Muthoni	Chair
	Water, Sanitation and Natural Resources Committee	Prischillah Mema Mumbua/Hamida Noor Sheikh <sup>143</sup>	Chair
<b>Nakuru</b>	County Assembly - Powers and Privileges	Mary Wanjiru Waiganjo	Chair
	ICT & e-Governance	Susan Njuguna	Chair
	Security & Governance	Rose Chepkoech	Chair
	Labour and Social Welfare	Catherine Kamau	Chair

The case of *National Gender and Equality Commission v Majority Leader, County Assembly of Nakuru & 4 others*<sup>144</sup> illustrates that there could be an understanding among some MCAs that committee leadership is a preserve of elected MCAs, which could have reduced the percentage of women in committee leadership significantly since most women were in the county assemblies on the basis of the nomination process. In the case under review, NGEC challenged the constitutionality of the Nakuru County Assembly's Report of the Selection Committee on the Harmonisation of Membership of Sectoral and Select Committees on the basis that it barred nominated members from occupying the positions of chairpersons and vice-chairpersons of the different sectoral committees of the County Assembly. The result was that the Chair and Vice-Chair

143 The leadership of this Committee appears to have changed during the term but a woman MCA replaced another as chair.

144 *National Gender and Equality Commission v Majority Leader, County Assembly of Nakuru & 4 others; Jubilee Party & another* (Interested Parties) High Court Petition 1 of 2019, Judgment of the High Court 29 July 2019 (2019) eKLR.

of the Information Communication Technology (ICT) Committee, both nominated women, and the vice chairs of the Justice and Legal Affairs; Finance and Planning; and Trade, Tourism and Cooperatives committees, who were also nominated women, were removed. Elected members (male and female) and nominated male members were not affected by the resolution whose effect was to reduce the percentage of nominated women in committee leadership from 25% to 0%, and the total number of women leading committees from 35% to 10%.

After considering both the process and the result, the High Court ruled that this drastic reduction was impermissible constitutionally. The High Court found instructive the fact that the decision to re-organise the County Assembly committees was informed by the view taken by the Leader of Majority that nominated MCAs should not occupy any leadership positions in the County Assembly. While making reference to Article 27 of the 2010 Constitution, the High Court ruled that the County Assembly and Leader of Majority and other County Assembly leaders were obligated to ensure non-regression of the goal of achieving substantive equality between the genders but also to take positive steps to ensure forward progress towards substantive gender parity and equity. Whether reduced into policy or not, the 'elected only' policy appears to be entrenched in some county assemblies with serious impact on the leadership of legislative committees by women. The position taken by the Nakuru County Assembly Leader of Majority can certainly not be generalised for all county assemblies. However, the hint should not be lost. It may well be possible that nominated MCAs may be missing out of leadership positions because of a silent 'elected only' policy.

### **Youth, devolution and inclusion**

Not much disaggregated data exists on the political participation of the youth in capacities such as CECM, Speaker, Deputy Speaker and committee leadership of the county assemblies. More importantly, hardly any comprehensive data exists on the performance of the youth in the 2013 General Elections except at the National Legislature. Without

such data, informed analysis and requisite policy interventions are difficult, which is bad for the youth empowerment agenda sanctioned by the 2010 Constitution. That said, the youth performed much better than the women and PWDs at the ballot at the county assembly level in the first decade of devolution; although, like these marginalised groups, their election through nomination did not always meet the constitutional muster.

### *Youth participation through elections by ballot*

The youth lost at ballot in the largest constituency (the nation or the presidency), they struggled in parliamentary elections, and realised their best performance in the smallest constituency – the county assembly ward. Since the promulgation of the 2010 Constitution, no youth has been elected as President or Deputy President. In 2013, the youth accounted for 27% of the elected MCAs, 6.9% of elected MNAs, 17% of the WMNAs and 6.4% of elected senators, while in 2017, the figures stood at 19.8%, 5.9%, 6.4% and 12.8%, respectively, as shown in Figure 16.

**Table 16: Nominated and elected youth in the 2013 elections**

Position	Male	Female	Total
Governor	1	-	1
Senator (elected)	3	-	3
Senator (nominated)	1	7	8
Members of National Assembly (elected)	19	1	20
Members of National Assembly (nominated)	3	2	5
Women Representatives (elected)	-	8	8
County Assembly Representatives	19	375	394
<b>Total Candidates</b>	<b>46</b>	<b>393</b>	<b>439</b>

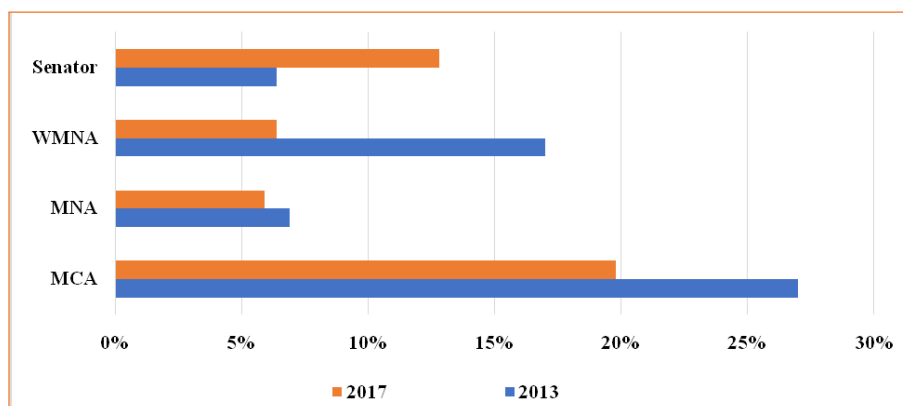
Source: Youth Agenda: Youth situation analysis 2014



**Table 17: Youths elected during the 2017 General Elections**

No.	Electiveposition	Gender		Total
		Male	Female	
1	Presidential	0	0	0
2	Senatorial	6	0	6
3	Member of National Assembly	14	3	17
4	Woman Member to the National Assembly	0	3	3
5	Gubernatorial	1	0	1
6	Member of County Assembly	274	13	287 <sup>145</sup>
<b>Total</b>		<b>295</b>	<b>19</b>	<b>314</b>

Source: IEBC data report on 2017 elections

*Figure 16 Representation of youths in legislative assemblies 2013 & 2017*

Unlike women and PWDs, the youth thrived at the MCA level, which might signal possibilities of their redemption through devolution. In 2017, 287 youth were elected to county assemblies (19.8%), a stellar performance when compared to 98 women (6.8%) or two PWDs<sup>146</sup> (0.14%)

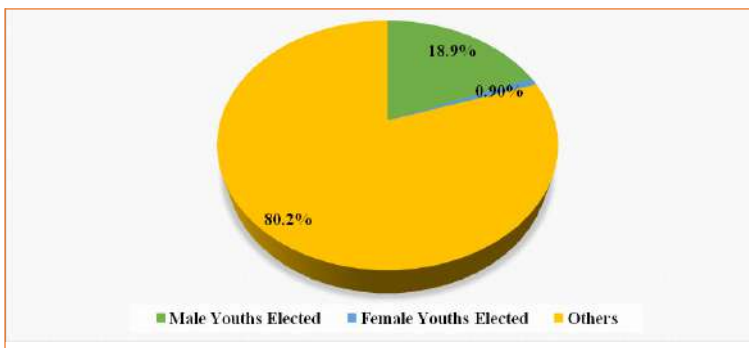
145 A different report puts this figure at 303. See Youth Agenda, 'Youth electoral participation', 7. However, we opted to work with the IEBC figure as they are the primary responsibility bearer when it comes to conduct of elections and therefore presumed to have authoritative figures on the results.

146 United Disabled Persons of Kenya, 'Post-audit survey level of inclusivity in the 2017 general elections' (2018) 26. One of these persons (Philip Kipng'etich Rotich) was elected to the County Assembly of Nakuru, one of our study counties.

or even their own average in the national legislative institutions – Senate (12%) and National Assembly (5.9%). However, this figure still represents a dip from 27% in 2013; although, as Nakuru County demonstrates, there are counties where the performance of the youth increased in 2017, where they did far better than the national average for the MCA positions above. In this case study, 13 youth were elected through ballot in 2013 (23.6%), which performance increased to 14 in 2017 (24.5%), hence reinforcing further the conclusion that devolution, especially the ward, is the place for optimal youth representation.

Matters were not that easy for the youth in the gubernatorial positions. Only one youth – Stephen Sang (Nandi County) – was elected to the position governor nationwide in 2017,<sup>147</sup> while three women were elected. Youthful deputy governors were elected in five counties (Elgeyo Marakwet, Kajiado, Nakuru, Taita Taveta, and Wajir), which accounted for 10.6% of all deputy governors in 2017.<sup>148</sup> A possible deduction from this data is that the youth are far more likely to be elected through ballot to the county legislative institutions rather than the county executive positions or the national offices.

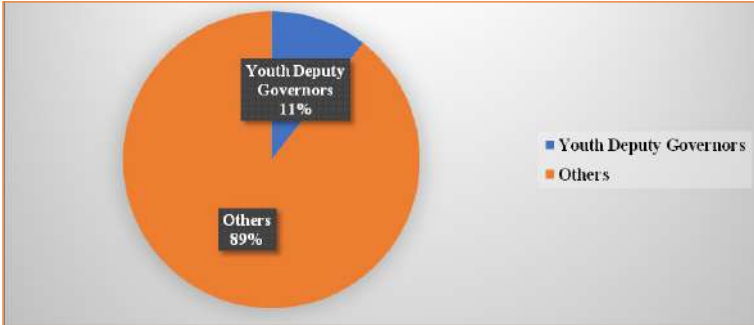
Figure 17 Representation of youths in county assemblies 2017



147 One youth was elected out of 7 who had contested gubernatorial elections. See IEBC, 'Data report on 2017 elections,' 15. However, Youth Agenda puts the number of candidates as slightly higher, at 11. See Youth Agenda, 'Youth electoral participation: Quick facts', 2017, 6.

148 Youth Agenda, 'Youth electoral participation' 6.

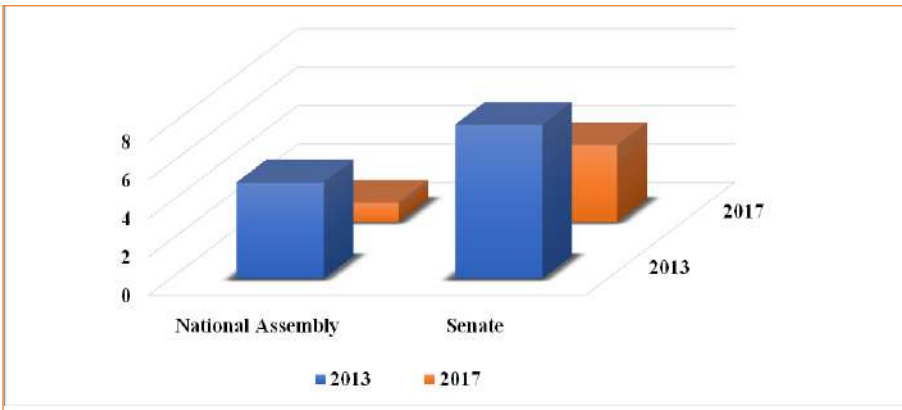
Figure 18 Youths elected as deputy governors 2017



*Youth participation through nomination*

Like in the case of women and PWDs, the affirmative action measures that the 2010 Constitution articulates guarantee the representation of the youth through nomination to Parliament<sup>149</sup> as well as to the county assemblies as part of the marginalised groups.

Figure 19 Youth participation through nomination in Parliament 2013-2022



As was the case with elections by ballot, the youth did not fare well in election by nomination in 2017. As can be seen from Figure 19,

149 Constitution of Kenya (2010), Article 97(1)(c) and 98(1)(c).

the number of youth nominated to the National Assembly dipped from five in 2013, to one in 2017, and from eight in 2013 to four in 2017 in nominations to Senate.<sup>150</sup>

At the county assembly level, the 2010 Constitution requires every county assembly to include ‘the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament.’<sup>151</sup> While the County Governments Act provides for six nominees,<sup>152</sup> the Elections Act has interpreted this constitutional dictate to mean that each county assembly shall have eight persons nominated to represent the marginalised groups – at least two of whom shall represent the youth.<sup>153</sup> Since the Elections Act is considered the *lex specialis*, therefore, political parties usually present a list of eight persons in accordance with the Elections Act. Thus, despite performing well at the ballot comparatively, it is expected that the youth would still be entitled to at least two slots in every county assembly through the nomination process. However, a review of the party lists published by the IEBC in respect of the 2013 and 2017 elections demonstrates that this requirement was not always met.<sup>154</sup> In 2013, one county assembly (Wajir) did not have a youth nominated, 26 county assemblies only nominated one, and only 19 were compliant.<sup>155</sup> In 2017, the party lists from five counties did not list any person as representing the youth,<sup>156</sup> while 15 counties only had one youth nominee. This meant that 27 counties were compliant, up from 19

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150 Youth Agenda, ‘Youth electoral participation’, 7.

151 Constitution of Kenya (2010), Article 177(1)(c).

152 County Governments Act, Section 7.

153 Elections Act, Section 36(1)(f).

154 In *National Gender and Equality Commission & others (NGEC) v IEBC & others*, Petition 147 of 2013, where the exclusion of the youth, women, ethnic minorities and PWDs from party lists for Parliament and county assemblies in 2013 was challenged, parties were directed conduct fresh party list nominations under the supervision of IEBC. A similar challenge by NGEC in 2017 was dismissed by the court for want of jurisdiction as will be discussed in the section on PWDs below.

155 It was not clear what the situation was in Embu County as the party list did not indicate who was nominated to represent the youth.

156 These were Marsabit, Kilifi, Nyandarua, Laikipia and Vihiga.

in 2013. These findings are reflected in the study county assemblies. As Table 18 and Table 19 show, with the exception of Narok in 2013 (where three youth were nominated), and Garissa and Nakuru in 2017 (where two and three youth were nominated, respectively), only one youth was nominated to each county assembly for both seasons notwithstanding the above clear constitutional threshold of two.

**Table 18: Youth nominated to the study county assemblies in 2013**

COUNTY	NOMINATED	TOTAL IN ASSEMBLY	
	No	No	%
Mombasa	1	15	7%
Garissa	1	18	6%
Nakuru	1	19	5%
Narok	3	17	18%
Kakamega	1	26	4%

**Table 19: Youth nominated to the study county assemblies in 2017**

COUNTY	NOMINATED	TOTAL IN ASSEMBLY	
	No	No	%
Mombasa	1	12	8%
Garissa	2	20	10%
Nakuru	3	23	13%
Narok	1	17	6%
Kakamega	1	29	3%

Counties could learn an important lesson from Parliament, which has a longer history, about the potential of affirmative action measures. In the repealed constitutional order, between 1992 and 2013, only one

youth (2%) was nominated to Parliament out of about 50 nomination slots.<sup>157</sup> The Repealed Constitution itself did not refer to the youth and neither did it reserve any of the 12 seats meant for nomination of persons to serve special interests in Parliament to the youth specifically.<sup>158</sup>

Just as they were neglected at constitutional level, so was their participation in politics.<sup>159</sup> But once affirmative action was embraced and 10 youth nominated to the 11<sup>th</sup> Parliament, the gains were clear as evidenced by the success of some of the beneficiaries of such measures at the ballot in 2017.<sup>160</sup> For instance, Johnson Sakaja, who was nominated to the National Assembly to represent the youth in the 11<sup>th</sup> Parliament, was elected to the 12<sup>th</sup> Parliament as the Senator for Nairobi.<sup>161</sup> Naisula Lesuuda and Martha Wangari who were nominated to Senate during the 11<sup>th</sup> Parliament were elected to the National Assembly in 2017 to represent Samburu West and Gilgil constituencies respectively.<sup>162</sup> Although the nomination of the youth in Parliament went down by more than 50% to five in 2017,<sup>163</sup> affirmative action has proven to be capable of offering the visibility, networks, and resources required for the youth to contest competitive electoral positions effectively subsequently.

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157 Mzalendo Trust, 'Claiming the space: Youth inclusion and participation in Kenya's Parliament', 2019, 10.

158 1963 Constitution, Section 39.

159 Media Development Association and Konrad Adenauer Stiftung, 'History of constitution making in Kenya,' 124; Constitution of Kenya Review Commission (CKRC) 'The Final Report of the Constitution of Kenya Review Commission', Approved for Issue at the 95 Plenary Meeting of the CKRC held on 10 February 2005, 104, 107, 175.

160 Mzalendo Trust, 'Claiming the space', 10.

161 Mzalendo Trust, 'Claiming the space', 10.

162 Mzalendo Trust, 'Claiming the space', 10.

163 One study puts the figure as 10 nominated members in 2013 and 5 in 2017 – see Mzalendo Trust, 'Claiming the space', 10; while another puts the figure at 13 in 2013 and 5 in 2017; Youth Agenda, 'Youth Electoral Participation' 7.

### *Youth participation through appointive positions*

As indicated in Figure 10, no youth or PWD held a Cabinet position at the national level between 2013 and 2022. While gender disaggregated data was easily available in relation to CECs, the same could not be said of age disaggregation. Therefore, we were unable to establish the number of the youth who had served as CECMs in the period under study.

### *Youth participation through leadership of legislative institutions*

The youth held key leadership roles at the national legislative institutions. During the period under review, a youthful person served as Deputy Majority Leader in Senate in 2013<sup>164</sup> and another served as Deputy Minority Whip in Senate in 2017.<sup>165</sup> Both in Senate and National Assembly, and in both 2013 and 2017, youthful MPs chaired crucial committees as Table 20 and Table 21 show.

**Table 20: Committees of Parliament led by youth, 2013**

Member	House	Committee
Soipan Tuya	National Assembly	Implementation
Sabina Chege	National Assembly	Education, Research and Technology
Priscilla Nyokabi	National Assembly	Justice and Legal Affairs
Kipchumba Murkomen	Senate	Devolved Government

164 Eleventh parliament, Order paper No 103, 3 December 2015: Senator Kipchumba Murkomen was elected Senate Deputy Majority Leader in 2015 following the nomination of Charles Keter to the Cabinet. See Eleventh Parliament, Special Sitting No 131, 16 December 2015.

165 Beatrice Kwamboka replaced Petronila Were Lokorio as Deputy Minority Whip see <<http://www.parliament.go.ke/sites/default/files/2018-10/Senate%20Votes%2011.10.2018.pdf>> (on October 2022).

<b>Stephen Sang</b>	Senate	Delegated Legislation
<b>Johnson Sakaja</b>	Senate	Joint Committee, National Cohesion and Equal Opportunity
<b>Naisula Lesuuda</b>	Senate	Joint Committee, Parliamentary Broadcast and Library

**Table 21: Committees of Parliament chaired by youth, 2017**

<b>Member</b>	<b>House</b>	<b>Committee</b>
<b>Samson Cherarkey</b>	Senate	Committee on Justice, Legal Affairs and Human Rights
<b>Johnson Sakaja</b>	Senate	Committee on Labour and Social Welfare Vice-Chair of the Senate Committee on National Security, Defence and Foreign Relations
<b>Naisula Lesuuda</b>	National Assembly	Committee on Regional Integration

At the county assembly level, data on the leadership of county assembly committees by the youth was difficult to find. However, information relating to speakership was available for 2017. The county assemblies of Elgeyo Marakwet, Nandi, Nyamira and Wajir elected youthful speakers in 2017 (8.5%), all of whom were male. In what is emerging as a pattern of intersectional invisibility, no female youth was elected as speaker.<sup>166</sup>

166 See Youth Agenda, 'Youth electoral participation', 7. However, there were 11 youth deputy speakers elected, with two female youth being elected in Kirinyaga and Tharaka Nithi counties.



Figure 20 Youth elected as speakers of county assemblies in 2017



### Persons with disabilities, devolution and inclusion

It is difficult to conduct research on PWDs and their inclusion in decentralised governance because little disaggregated data exists on their representation in political and public life generally and county governance specifically. Even institutions that should have such information readily such as the Council of Governors (CoG), the counties, the IEBC, the Kenya National Bureau of Statistics (KNBS), the National Council for Persons with Disabilities (NCPWD) and the universities have not done much in securing such information. The result has been less public discourse on the subject and therefore little progress in the quest to include PWDs in Government.

To prevent such scenarios, the United Nations Convention on the Rights of Persons with Disabilities<sup>167</sup> requires states to collect appropriate information relating to PWDs in a participatory manner, to disaggregate such information systematically, and to disseminate it through accessible mediums.<sup>168</sup> The rationale for this is to help states and

167 Kenya ratified the United Nations Convention on the Rights of Persons with Disabilities on 19 May 2008.

168 United Nations Convention on the Rights of Persons with Disabilities, Article 31. See also, General Comment no 6 (2018) para 71 on equality and non-discrimination,

other actors to identify and address the barriers that the PWDs face;<sup>169</sup> data collection and analysis being essential measures in monitoring anti-discrimination policies and laws.<sup>170</sup> This normative framework should form the basis for collecting information on questions such as how many PWDs vie for political office, how many actually win and for what reasons, and in what areas they are likely to succeed and why. Already, there are indications that the performance of PWDs in electoral processes might be dependent on their type of disability, gender, age, cultural background or whether they are part of a marginalised population. All such information should be collected, disaggregated and disseminated if appropriate interventions are to be made.

Some data on the participation of PWDs exists, although disparately, not systematically, and not across electoral cycles, making analysis based on trends and patterns arduous but possible. A number of useful deductions can be made from the limited information available. One, the first decade of devolution brought about noticeable progress but did not achieve the optimal representation of PWDs in national and county institutions as envisioned by the 2010 Constitution. Two, even in their marginalisation, men with disabilities outwitted their female counterparts, which brings about questions of intersectionality. Three, persons with physical disabilities did better than persons with other disabilities such as intellectual and mental both at the ballot and the nomination processes, which might be an indication of hierarchies even within PWDs. Therefore, care has to be taken to avoid homogenisation of disability since in many cases, due to intersecting discrimination, PWDs are made of multiple subgroups with varying inclusion needs. In the past, the inclusion of PWDs was taken to mean inclusion of persons with physical disabilities, thus creating double invisibility for persons

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Committee on the Rights of Persons with Disabilities. CRPD/C/GC/6; also; General Comment No 5 (2017) para 95 on living independently and being included in the community, CRPD/C/GC/5.

169 United Nations Convention on the Rights of Persons with Disabilities, Article 31.

170 General Comment No 6 (2018) on equality and non-discrimination, Committee on the Rights of Persons with Disabilities, CRPD/C/GC/6, para 71.

with other categories of disability.<sup>171</sup> Four, despite carrying significant promise, the nomination path did not realise its full potential partly due to the failure of political parties and the IEBC to adhere to the law. Lastly, the impact of PWDs had yet to be felt at the levels of CECM and at the leadership of county assembly committees.

### *Participation of PWDs through elections*

Going by available information, the representation of PWDs in both the national and county institutions remains low, generally. Additionally, men with physical disabilities dominate the list of the few elected PWDs. At the national level, only six PWDs were elected to the National Assembly (2.1%),<sup>172</sup> and only one to the Senate (2.1%) in 2013 as shown below.<sup>173</sup> This dismal performance plummeted in 2017 when only three PWDs were elected to the National Assembly (1.03%) and none to the Senate (0%). All the nine MPs elected in the two elections had physical disabilities, and only one, Rose Museu, was a woman – elected to a seat reserved for women as the Women Representative for Makueni County. At the MCA level, only nine PWDs were elected to the county assemblies nationally in 2013, representing 0.6% of the elected members.<sup>174</sup> All of them were men with physical disabilities. Even worse, none of the study counties elected a PWD in 2013. However, in 2017, matters improved in Kakamega, Mombasa and Nakuru slightly with

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171 Double invisibility has been used by disability rights advocates to highlight the fact that certain categories of persons with disabilities such as women and children with disabilities are seen as less worthy of social investment (for instance, through education) which results in their making less progress than other persons with disabilities. See Gerard Quinn and Theresia Degener, 'Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability' (2002) 23;. See also Lucianna Thuo, 'Implementation of political participation standards for persons with intellectual disabilities in Kenya' 2 *Strathmore Law Journal* (2016) 97 and 125.

172 Handicap International, 'Baseline survey report on participation of persons with disabilities in the electoral and political processes in Kenya' July 2017, 119.

173 Handicap International, 'Baseline survey report', 119.

174 Handicap International, 'Baseline survey report' 119-120.

the election of one PWD in each of the county assemblies. At the close of the devolution decade, only three PWDs had entered the combined five study assemblies through ballot, all of them men with physical disabilities, and only nine had graced Parliament, eight of whom were men with physical disabilities.

**Table 22: Persons with disabilities elected to Parliament 2013-2022**

Year/ Position	National Assembly		Senate		Total	
	No	%	No	%	No	%
2013	6 out of 290	2.1%	1 out of 47	2.1%	7 out of 337	2.4%
2017	3 out of 290	1.03%	0 out 47	0%	2 out of 337	1.5%

These statistics display dismal representation of PWDs going by the 2019 census report and the 2010 Constitution. According to the 2019 census report, PWDs comprise up to 0.9 million people, about 1.9% of Kenya's population, and are a significant part of the study counties specifically - being 0.6%, 5.2%, 1.6%, 3.7%, and 1.0% of the populations of the counties of Garissa, Kakamega, Mombasa, Nakuru, and Narok, respectively, as Table 23 shows.<sup>175</sup> Moreover, PWDs are poorly represented on the basis of gender since women comprise 57.1% of the total population of PWDs.<sup>176</sup> Additionally, persons with physical disabilities are more visible, while persons with other disabilities such as intellectual and mental are relegated. PWDs are even more unrepresented going by the constitutional threshold, which mandates that they shall comprise at least 5% of the elective and appointive positions in the State and public services.<sup>177</sup> The above poor record of the PWDs nationally and in all the study counties calls for some reflection regarding their levels of activity in the electoral processes.

175 Kenya National Bureau of Statistics, '2019 Kenya population and housing census: Analytical report on disability Volume XV', April 2022, 31.

176 KNBS, '2019 Kenya population and housing census,' 25.

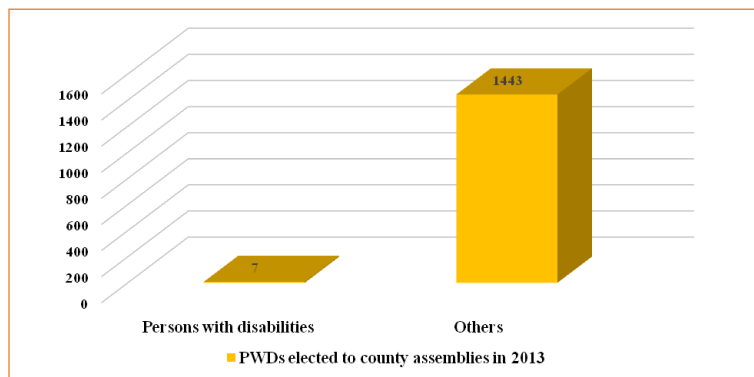
177 Constitution of Kenya (2010), Article 54(2).

Harder questions require to be asked regarding matters such as the measures which the State, political parties and other agencies have taken to enhance PWDs' participation in electoral processes to match their population and meet the constitutional requirements.

**Table 23: The population of PWDs in the study counties<sup>178</sup>**

County	Disability			
	Total	Male	Female	%
Garissa	5187	2870	2316	0.6
Kakamega	47,778	20,300	27,475	5.2
Mombasa	14,226	6376	7849	1.6
Nakuru	33,899	14,480	19,412	3.7
Narok	9029	4272	4757	1.0
<b>Total in Kenya</b>	<b>916, 692</b>	<b>393,451</b>	<b>523,184</b>	<b>1.9</b>

*Figure 21 Persons with disabilities elected to county assemblies in 2013*



**Table 24: Persons with disabilities in the National Assembly in 2013-2017**

Name	Gender	Disability	Position	Party
<b>Hon Mohamed Shidiye</b>	M	Physical	Elected Member of Parliament for Lagdera Constituency	<b>TNA</b>
<b>Hon Timothy Wanyonyi</b>	M	Physical	Elected Member of Parliament for Westlands Constituency	<b>ODM</b>

178 KNBS, '2019 Kenya population and housing census,' 31.

<b>Hon Hassan Yusuf</b>	M	Physical	Elected Member of Parliament, Kamukunji Constituency	<b>TNA</b>
<b>Hon Rose Museo</b>	F	Physical	Elected Women Representative, Makueni County	<b>WIPER</b>
<b>Hon Jared Opiyo</b>	M	Physical	Elected Member of Parliament, Awendo Constituency	<b>Ford-K</b>
<b>Hon Kubai Iringo</b>	M	Physical	Elected Member of Parliament, Igembe Central Constituency	<b>ODM</b>
<b>Hon Bishop Robert Mutemi</b>	M	Physical	Nominated Member of Parliament	<b>WIPER</b>
<b>Hon Janet Teiyan</b>	F	Physical	Nominated Member of Parliament	<b>TNA</b>
<b>Hon Isaac Mwaura</b>	M	Albinism	Nominated Member of Parliament	<b>ODM</b>

Source: Handicap International, 'Baseline survey report on participation of persons with disabilities in the electoral and political processes in Kenya (2017)'.

**Table 25: Persons with disabilities in the Senate 2013-2017**

<b>Name</b>	<b>Gender</b>	<b>Disability</b>	<b>Position</b>	<b>Party</b>
<b>Senator Sammy Leshore</b>	M	Physical	Samburu County	<b>TNA</b>
<b>Senator Harold Kipchumba</b>	M	Physical	Nominated Senator	<b>ODM</b>
<b>Senator Linet Kemunto</b>	F	Physical	Representing PWDs	<b>TNA</b>

Source: Handicap International, 'Baseline survey report on participation of persons with disabilities in the electoral and political processes in Kenya (2017)'.

**Table 26: Persons with disabilities elected to county assemblies, 2013-2017**

County	Number Elected	Gender	Disability
Kilifi	1	Male	Physical
Kisii	1	Male	Physical
Lamu	1	Male	Physical
Migori	3	Male	Physical
Nairobi	1	Male	Physical
Siaya	1	Male	Physical
Vihiga	1	Male	Physical

**Table 27: Persons with disabilities in the study county assemblies (2013)**

County	Elected		Nominated		Total in assembly	
	No	%	No	%	No	%
Mombasa	0	0%	1 out of 15	7%	1 out of 30	3.3%
Garissa	0	0%	2 out of 18	11%	2 out of 36	5.6%
Nakuru	0	0%	2 out of 19	11%	2 out of 38	5.3%
Narok	0	0%	1 out of 17	6%	1 out of 34	2.9%
Kakamega	0	0%	1 out of 26	4%	1 out of 52	1.9%

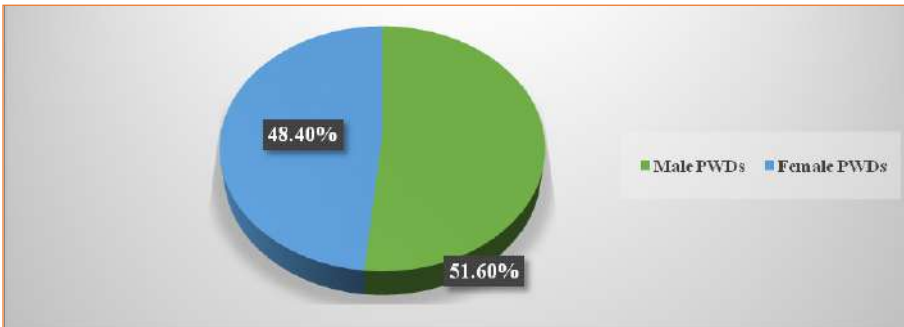
**Table 28: Persons with disabilities in the study county assemblies (2017)**

County	Elected		Nominated		Total in assembly	
	NO.	%	NO.	%	NO.	%
Mombasa	1 out of 30	3.3%	1 out of 12	8%	2 out of 42	4.8%
Garissa	1 out of 60	1.7%	2 out of 20	10%	3 out of 80	3.8%
Nakuru	1 out of 55	2%	0 out of 23	0%	1 out of 88	1%
Narok	0 out of 30	0%	0 out of 17	0%	0 out of 47	0%
Kakamega	0 out of 30	0%	2 out of 29	13.8%	2 out of 59	3.9%

### *Participation of PWDs through the nomination process*

As is already clear, popular democratic elections have not secured sufficient representation of PWDs. No President, Deputy President, Governor or Deputy Governor with disability was elected in the first decade of devolution; some county assemblies completed entire electoral cycles without an elected PWD; so did Senate, which between 2017 and 2022 had no elected member with disability. However, both the National Assembly and Senate had two persons nominated each in 2017 in line with the Constitution.<sup>179</sup> The question is, has the affirmative action measure, which the 2010 Constitution articulates at Article 177(1) (c), led to any significant progress in this regard in the case of county assemblies? The answer is yes. 62 PWDs were nominated to county assemblies in 2013, which figure dropped to 42 in 2017.<sup>180</sup> However, women PWDs fared better in 2017, accounting for 57% of the nominees up from 48.4% as shown in figures 22 and 23.

Figure 22 Persons with disabilities nominated to county assemblies by gender (2013)

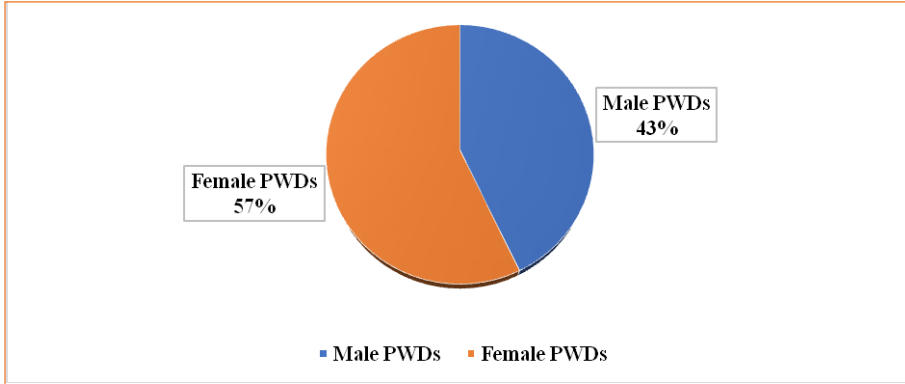


179 Constitution of Kenya (2010), Articles 97(1)(c) and 98(1)(d). David Ole Sankok and Denitah Ghati were nominated to the National Assembly while Isaac Mwaura and Gertrude Musuruve Inimah were nominated to the Senate. See United Disabled Persons of Kenya, 'Post-audit survey level of inclusivity in the 2017 general elections', 2018, 30.

180 Westminster Foundation for Democracy, 'The state of political inclusion of persons with disabilities (PWDs) within political parties in Kenya', 2020, 15; UDPK, 'Post-audit survey level of inclusivity in the 2017 general elections', 27.



Figure 23 Persons with disabilities nominated to county assemblies by gender (2017)



Additionally, the case studies for this research show that there is promise in the constitutional requirement for affirmative action with respect to PWDs. Going by law, affirmative action guarantees that at least PWDs will have two representatives per county assembly. In 2017, most of the counties had at least 2 nominees in the assembly.<sup>181</sup> However, 17 counties did not comply with this requirement as no PWDs were nominated.<sup>182</sup> Second, although the practice fell short of the constitutional and statutory requirements, the nomination process proved to be the avenue for significant representation of PWDs.

In 2013, Kakamega, Mombasa and Narok each had one PWD nominated, while Garissa and Nakuru had two each as seen in Table 27. In 2017, Mombasa had one, Garissa and Kakamega had two each, while Nakuru and Narok had none. Through the ballot, three PWDs entered the combined five study assemblies in a decade; through affirmative action, PWDs occupied 12 seats in the five county assemblies during the same period.

181 Mandera and Migori had three each. UDPK, 'Post-Audit survey level of inclusivity in the 2017 general elections', 27.

182 Baringo, Bungoma, Busia, Kericho, Kilifi, Kisii, Kwale, Laikipia, Makueni, Muranga, Nairobi, Nakuru, Narok, Nyeri, Taita Taveta, Turkana and West Pokot. See UDPK, 'Post-audit survey level of inclusivity in the 2017 general elections', 27.

Notwithstanding its huge promise, our case studies reveal a number of challenges in operationalising affirmative action measures. To begin with, as the case of Narok signals, there could be an understanding that just any person can represent the interests of PWDs - not necessarily PWDs themselves. On this basis, a person without disability was nominated to Narok County Assembly to represent PWDs. The opportunity to scrutinise Narok County's nomination process judicially presented itself in *Moses Kinyamal Kipinter v Jubilee Party*<sup>183</sup> but the petition was dismissed on the basis that the petitioner could not demonstrate that the nomination process was flawed or that there was interference with the list for Narok County. Second, and as was the case with the election of PWDs through ballot, the issue of nomination of PWDs is also gendered. For instance, no woman with disability was nominated to represent the interests of PWDs in Garissa County Assembly for the first two electoral cycles. The one woman with disability who sat in the County Assembly was nominated to represent gender and ethnic minorities not PWDs.

Finally, the case studies give the impression that even the limited presence of nominated PWDs in the county assemblies was through half-hearted implementation of the law rather than the acceptance of the principle of their inclusion. As Table 28 shows, all the study county assemblies failed to meet the constitutional muster invariably. For most part, less than two MCAs with disability were nominated. Where the legal expectation was met in one cycle, the county assembly fell far short in the next as Garissa and Nakuru show. When no PWD was elected at ballot to Nakuru County Assembly in 2013, two PWDs were nominated. The fact that the relevant actors did not nominate a PWD in 2017 after one was elected at the ballot is a plausible illustration for the assertion that the affirmative action principle was yet to be internalised.

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183 Political Parties Disputes Tribunal at Nairobi Complaint, No 452 of 2017.

The case of *National Gender and Equality Commission & others (NGEC) v IEBC & others*,<sup>184</sup> where the exclusion of the youth, women, ethnic minorities and PWDs from party lists for Parliament and county assemblies in 2013 was challenged demonstrated further that the constitutional dictates of non-discrimination and inclusion had not permeated the politics that characterise the nomination process in Kenya, and additionally that the IEBC had failed to carry out its supervisory role over how political parties carry out party list nominations. In this case, the High Court directed that the party list nomination process to be repeated in respect of county assemblies but found that the same could not be done for parliamentary seats since the nominees had already been gazetted and declared elected at the time of the judgement, and could only be removed through an election petition.

The case not only clarified the supervisory role of the IEBC in ensuring that the party list nomination process meets the constitutional muster but also formed the basis for the adoption of the Elections (Party Primaries and Party Lists) Regulations 2017 that were meant to guide political parties in the preparation of party lists for both the national and county legislative assemblies. The NGEC filed a similar case in 2017, *National Gender and Equality Commission (NGEC) v IEBC & 3 Others*,<sup>185</sup> although, again, the High Court could not give a remedy. This was because during the pendency of the petition, the list of nominees was gazetted, thus transmuting the dispute into an election petition that could only be determined by an election court gazetted by the

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184 *National Gender and Equality Commission v Independent Electoral and Boundaries Commission*, Constitutional Petition 147 of 2013 Ruling of the High Court, 25 March 2013 eKLR.

185 *National Gender and Equality Commission v Independent Electoral and Boundaries Commission & 3 others*, Constitutional Petition 409 of 2017, Judgement of the High Court, 4 May 2018 eKLR.

Chief Justice.<sup>186</sup> The High Court therefore lacked jurisdiction under Article 165 (3) of the 2010 Constitution.

A major challenge with party list nominations remains that they are used to reward party cronies who fail to secure election in first-past-the-post (FPTP) elections, thus denying representation to marginalised groups.<sup>187</sup> Without taking measures to comply with the law, political parties will continue to marginalise PWDs in the allocation of nomination slots, which, as seen above, is the marginalised group's main avenue for accessing representation. While more work will have to be done at the ballot as gains made on the nomination side are enhanced, a lot more sensitisation is needed on the importance of affirmative action measures for PWDs just as civic and judicial vigilance to ensure political parties and the IEBC safeguard the few positions that the 2010 Constitution reserves for the marginalised group.

### *Participation of PWDs in appointive positions*

It can be generalised that PWDs fared badly with regard to

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186 The Supreme Court had ruled in the case of *Moses Mwaicigi and 14 Others v IEBC and 5 Others* Supreme Court Petition 1 of 2015 that:

...It is plain to us that the Constitution and the electoral law envisage the entire process of nomination for the special seats, including the act of gazettelement of the nominees' names by the IEBC, as an integral part of the election process. [106] The Gazette Notice in this case, signifies the completion of the "election through nomination," and finalizes the process of constituting the Assembly in question. On the other hand, an "election by registered voters", as was held in the Joho Case, is in principle, completed by the issuance of Form 38, which terminates the returning officer's mandate, and shifts any issue as to the validity of results from the IEBC to the Election Court.

[107] It is therefore clear that the publication of the Gazette Notice marks the end of the mandate of IEBC, regarding the nomination of party representatives, and shifts any consequential dispute to the Election Courts. The Gazette Notice also serves to notify the public of those who have been "elected" to serve as nominated members of a County Assembly.

187 Kennedy Kimanathi, 'IEBC audit report reveals big flaws in nominated MCAs list', *Nation*, 22 October 2018. Antony Gitonga, 'IEBC rejects nomination lists from all 79 parties' *The Standard*, August 2020.

participation in the county executive committees (CECs); for they were not represented in the CECs of the study counties. Yet the attempt by the Northern Nomadic Disabled Persons' Organisation (NONDO) to enforce Article 54(2) of the 2010 Constitution<sup>188</sup> against Garissa County through litigation<sup>189</sup> failed as the High Court declined to nullify the exclusive appointments to the CEC arguing that the litigants did not demonstrate that PWDs applied for the positions and were excluded. The practice was unsatisfactory enough, clearly. But the litigation geared towards addressing the problem worsened matters as a result of the retrogressive jurisprudence that shifted the burden of demonstrating effort to the members of the marginalised group themselves.

#### *Participation through leadership of legislative institutions*

The first decade of devolution rendered 15 slots for PWDs in all the study county assemblies. However, their influence in terms of the leadership of the committees of the county assemblies was insignificant, which might be illustrative of the performance of the marginalised group generally. With the exception of Garissa County, where a PWD chaired the Water Committee in 2013, no other PWD was elected to chair any committee of the study county assemblies. Only one PWD rose to the rank of Vice-Chair – as Vice-Chair, Finance Committee, Nakuru County. While many PWDs were members of county assembly committees, their absence at the helm reveals that a lot more work is needed before more substantive inclusion can be achieved.

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188 Article 54(2) requires that at least 5% of all elective and appointive positions be reserved for PWDs.

189 *Northern Nomadic Disabled Persons' Organization (NONDO) v Governor County Government of Garissa & another* Constitution Petition No 4 of 2013, Judgement of the High Court, 16 December 2013 eKLR.

**Table 29: Representatives of PWDs in the study county assemblies and their membership in county assembly committees 2013**

County	Representatives name	Committees	Position
Mombasa	Hudson Karuma	N/A	N/A
Nakuru	Anne Wanjiru Maina	N/A	N/A
	Joshua Wilson Murithi	N/A	N/A
Kakamega	Roselyn Akoyi	Justice and Legal Affairs Committee	Member
Garissa	Gedi Adou Abdi	Social Services and Sports Agriculture and Livestock	Member
	Abass Abdirahmann	N/A	N/A
Narok	Violet Sikawa	N/A	N/A

**Table 30: Representatives of PWDs in the study county assemblies and their membership in county assembly committees 2017**

County	Representatives name	Committee(s)	Position
Mombasa	Ramla Said Omar	County Business Committee	Member
Nakuru	Philip Kipngetch Rotich	Finance Committee	Vice Chair
Kakamega	Roselyne Akoyi	Justice and Legal Affairs Committee	Member
	Timothy Aseka	N/A	N/A

## County laws, policies and programmes, and devolution and inclusion

Up to this point, it is clear that women, youth and PWDs were part of the devolution decade as elected and nominated MCAs – and especially for women, as speakers, deputy speakers and committee chairs, and as governors, deputy governors, CECMs, among others.

However, it is important to ask further questions. Were there gains beyond the participation levels discussed above? Did devolution result into laws and programmes meant to promote the welfare of the three marginalised groups? Our survey of the case studies showed that there were benefits beyond mere inclusion, since laws favourable to the marginalised groups were enacted and many appropriate projects launched.

### *County laws through the lenses of the marginalised groups*

As Tables 31-35 show, while the approaches differed from county to county, our case studies demonstrate that county legislation favourable to the marginalised groups tended to focus on the following main objectives: accommodating members of the marginalised groups in the leadership of the various institutions which the laws established including through special quotas; establishing special funds to support their economic welfare; incorporating affirmative action measures in county procurement procedures; enhancing maternal and antenatal healthcare; and taking special measures to accommodate PWDs.

These similarities accentuate not only that the problems are common, but also that a general consensus on the solutions is emerging. To the common problem of the absence of the members of the marginalised groups in institutions of governance, the emerging consensus is to secure their inclusion through special seats. To the common problem of the economic subordination of the marginalised, the general solution appears to be measures such as funds to support women, youth and PWDs as individuals and through their self-help groups and special measures in the award of county government tenders. To the common challenges relating to antenatal and postnatal care, counties are agreeing on free universal healthcare and related initiatives. To the common challenges PWDs face in accessing certain places and information, the response of the counties was to facilitate special accommodation. Coming from the grassroots, such policies may continue to recommend themselves at the national level perhaps even more strongly.

**Table 31: Examples of Garissa County laws on women**

Act	Section/ Provision	Summary
Garissa County Assembly Service Act, 2014	5 (2) (f)	Provides that every member of the County Assembly shall promote gender equality and good governance.

**Table 32: Examples of Kakamega County laws on women**

Act	Section/ Provision	Summary
Kakamega County Rural Water and Sanitation Corporation Act, 2020	16(3) 6(2)	All appointments in the County Service Board shall take into account gender, equity and regional balance. Appointments to the Kakamega Rural Waters Corporation shall take into account gender, equity and regional balance.
Kakamega County Administrative Units and Boundaries Act, 2015	6(4)(5)	Established a Membership Committee where not more than 2/3 of members shall be of the same gender.
Kakamega County Alcoholic Drinks Control Act, 2014	4(i)	Provides that not more than two persons appointed in the Sub-County Committee shall be of the same gender.
Kakamega County Tourism Act 2014	13(h) 17(3)	Members nominated to the County Tourism Board shall take into account gender parity and regional balance. The appointment into the regional tribunal shall take into account regional balance and gender parity.
Kakamega County Polytechnics Act, 2014	21(2)	Provides that gender balance shall be considered while nominating members of the County Polytechnic Board.
Kakamega County Childhood Development and Education Act, 2014	9(2) 35 (3) (c)	Provides that a school or person responsible for admission shall not discriminate against any child seeking admission on any ground, including ethnicity, gender, sex, religion, race, colour or social origin, age, disability, language or culture. Provides that the County Education Board shall only register a school if the available premises and accommodation are suitable with regard to the number, age, gender, and security of the learners who are to attend the institution



<b>Kakamega County General Teaching and Referral Hospital Act, 2017</b>	15(3)	All appointments to the Hospital Board shall be competitive and shall take into account gender equity and ethnic and regional balance in accordance with the Constitution.
<b>Kakamega County Revenue Administration and Management Act, 2017</b>	13 (3) 6 (6)	Provides that all staff appointments into the Kakamega County Revenue Agency shall take into account gender equity. In determining nomination criteria for chairperson and members of the Board of the Kakamega County Revenue Agency, gender equity shall be taken into consideration.

**Table 33: Examples of Mombasa County laws on women**

<b>Act</b>	<b>Section/ Provision</b>	<b>Summary</b>
<b>Mombasa County Local Tourism Act 2017</b>	15 (g)	The County Executive Committee Member shall promote sustainable and responsible local tourism development and the Council shall, in that respect engage local communities in planning and decision-making, empower women, children and youth, and embrace the wisdom, knowledge and values of local communities in the development of local tourism.
<b>Mombasa County Finance Act 2015</b>	N/A	Item 1892 of the Finance Bill providing for (a) For youth and women groups/small/regular/chama meetings per session - 2000 (b) For all other events and meetings per session - 5000 This information is absent in the Finance Act.

**Table 34: Examples of Nakuru County laws on women**

<b>Act</b>	<b>Section/ provision</b>	<b>Summary</b>
<b>Nakuru County Cooperative Revolving Development Fund Act, 2020</b>	4(e)	To attract and facilitate investment in cooperative society's institutions that have linkages to low-income persons, community-based organisations, and women groups.

**Table 35: Examples of Narok County laws on women**

Act	Section/ Provision	Summary
Narok County Healthcare Services Improvement Fund (Amendment) Act, 2020	16(2)	Provides that at least one third of the Health Facilities Management Committee shall be of the opposite gender.
Narok County Maasai Mara Community Support Fund Act, 2014	23(h)	Provides that funds raised shall be used to support cultural activities, youth groups, gender groups and persons with disabilities
Narok County Tourism Act, 2017	13(g) 17(3)	Provides that three other members, not being public officers, shall be nominated or selected through a competitive process taking into account regional balance and gender parity and appointed by the Executive Committee Member to the Narok Tourism Board. Provides that the nomination or appointment of members of the Tribunal shall be through a competitive process taking into account regional balance and gender parity, and with the prior approval of the County Assembly.
Narok County Health Services Improvement Fund Act, 2017	12(2) 12(3)(f)	Provides that all the appointment positions shall meet 1/ 3 gender rule including

**Table 36: Examples of laws on youth in Garissa County**

Act	Section/ Provision	Summary
Garissa County Appropriation Act, 2014	5	This Act allocates a sum of money for salaries and expenses for salaries for education, the youth affairs, sports and polytechnic.
Garissa County Development Frontier Act No 1 of 2020	7(8)	This Act ensures collaboration in empowering women, youth and persons with disabilities.

**Table 37: Examples of laws on youth in Kakamega County**

<b>Kakamega County</b>		
<b>Kakamega County Alcoholic Drinks Control Act No 6 of 2014</b>	9(3)(i)	This Act establishes a sub-county committee which consists of three residents of the sub-county appointed by the Executive Member through a competitive process in accordance with the prescribed rules, one of whom shall be a youth provided that not more than two persons shall be of the same gender among other representatives. It also establishes the County Alcoholic Drinks Regulations Administrative Review Committee which also consists of two residents of the county appointed by the Executive Member through a competitive process in accordance with the prescribed rules, one of whom shall be a youth provided that one person shall be of the opposite gender.
<b>Kakamega County Revenue Administration Act No 1 of 2014</b>	7 <sup>th</sup> Schedule	This Act acknowledges youth groups and youth affairs in relation to education and sports responsible for the collection and transportation of solid waste and allocates a sum of money as per the groups.

**Table 38: Examples of laws on youth in Mombasa County**

<b>Mombasa County</b>		
<b>Mombasa County Appropriation Act No 1 of 2013</b>	5	This Act allocated a sum of money for salaries and expenses of youth, gender and sports including expenses of general administration and financial management services of the county, sub-county and ward administrators.
<b>Mombasa County Liquor Licensing Act, No 12 of 2014</b>	19(2)(h)	This Act establishes the County Liquor Licensing Review Committee made up of three residents of the county appointed by the County Executive Committee one of them being a representative of the youth.

**Table 39: Examples of laws on youth in Nakuru County**

Nakuru County		
<b>Nakuru Appropriation Act, No 7 of 2020</b>	4	This Act provides for a budget allocated for salaries and expenses for Department of Youth Culture Gender Sports and Social Services, including Culture and Public Amenities. (Ksh. 241,325,042)
<b>Nakuru County Cooperative Revolving Development Fund Act, No 5 of 2020</b>	4 (c), 5 (c)	This Act obliges the fund to attract and facilitate investment in cooperative societies that have linkages to micro, small and medium enterprises that benefit the youth. This Act also indicates the principles that guide the Fund one of them being protection of the interests of the marginalized, persons with disabilities, women and youth.
<b>Nakuru County Tourism and Marketing Act No 4 of 2020</b>	6 (h)	This Act establishes the Board of Directors and incorporating two youth professionals who are qualified and experienced in matters related to tourism appointed by the County Executive Committee Member in consultation with the Governor provided that one person shall be of either gender.

**Table 40: Examples of laws on youth in Narok County**

Narok County		
<b>Narok County Appropriation Act, No 2 of 2020</b>	3	This Act provided for the expenses of the Department of Education, Youth Affairs, Sports, Culture and Social services (Ksh 1,124, 039, 661).
<b>Narok County Healthcare Services Improvement Fund (Amendment) Act, No 3 of 2020</b>	5(e), 16(1)(d) (iv)	This Act amended the original act by inserting a provision which acknowledged a youth representative. The Act also establishes the Health Facilities Management Committee in which one person among others shall be appointed by the County Executive Committee members to represent the youth.
<b>Narok County Supplementary Appropriation Act, No 2 of 2020</b>	3	This Act provided for the expenses of the Department of Education, Youth Affairs, Sports, Culture and Social services (Ksh 1, 117, 141, 469).

**Table 41: Examples of laws on marginalised groups in the study counties**

County	Act	Summary
Mombasa	Mombasa County Local Tourism Act, 2014	Section 8(2)(c)(iv); The County Executive Committee shall determine information in relation to tourism businesses and at least provide access to persons with disabilities, children and the aged.
Nakuru	Nakuru Tourism and Marketing Act, No 4 of 2020	Section 6(1)(i); The Board of Directors shall consist of a person representing the persons with disabilities appointed by the County Executive Committee member in consultation with the Governor.
	Nakuru County Co-operative Revolving Development Fund Act, No 5 of 2020	Section 5(c); The Board of the Fund shall be guided under the principle of protecting the interest of the marginalised persons with disabilities, women and the youth.
Narok	Narok County Healthcare Service Improvement Fund (Amendment) Act, No 3 of 2020	Section 12A(d)(iii); The Health Management Committee shall comprise of the following members appointed by the Executive Committee Member one being a person representing persons with disabilities.

### *County programmes through the lenses of the marginalised groups*

County programmes aimed at ameliorating the situation of the marginalised groups tended to fall into five broad categories; business and investment, education and vocational training, public works, sports, and health and general welfare.

Under business and investment, the idea was to empower unemployed women, youth and PWDs mainly through establishing special funds, imparting the skills in various trades and entrepreneurship, providing the requisite material assistance, and adopting affirmative action economic policies. For instance, Garissa County established a revolving fund of up to Ksh 100 million under the Department of Trade

and Investment,<sup>190</sup> and used this framework to train 6000 women and youth on sustainable income generation.<sup>191</sup> Kakamega County initiated a plan to support women and youth by distributing 300 bags of maize and 60 bags of beans to 60 vulnerable groups of women and youth county-wide in 2020-2021.<sup>192</sup> Kakamega County also supported organisations of *boda-bodas* by educating the operators on road safety, and training them on the Access to Government Procurement Opportunity (AGPO). Kakamega County additionally distributed at least 65 car wash machines, together with 1500 litres plastic water tanks for youth economic empowerment.<sup>193</sup>

Along the same lines, Mombasa County initiated an empowerment programme through livestock production to assist both women and youth to gain agricultural and entrepreneurial skills for self-employment. Additionally, Mombasa County trained and supplied the necessary inputs to 1500 women and youth county-wide under this programme.<sup>194</sup> Further, Mombasa County reported to have established the Mombasa Business Innovation and Incubation Hub with its key outputs as training the youth on business generating skills, funding youth groups and establishing youth stop centres to harness entrepreneurship talents from the youth.<sup>195</sup>

Similarly, Nakuru County established agricultural entrepreneurial projects that included supply of piglets, chicks and potato seeds for women and youth programmes. In 2016, Nakuru County installed seven greenhouses to support youth groups and schools.<sup>196</sup> Further, according to the Nakuru County Annual Development Plan 2020/2021, the County facilitated 500 youth to participate in the National Youth

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190 Through the Garissa County Revolving Fund Act, 2018.

191 Garissa County Bills and Acts, *Revolving Fund Act Garissa County 2018*.

192 *Kakamega County annual development plan FY 2022/2023*, 102.

193 *Kakamega County annual development plan FY 2022/2023*, 100.

194 Mombasa County, *First county integrated development plan 2013-2017*, 236, See also *Mombasa County integrated development plan 2018-2022*, 49.

195 *Mombasa County integrated development plan 2018-2022*, 108, 109.

196 *Nakuru County approved MTEF budget estimates FY 2017-2018*, 158.

Week, where they were trained on entrepreneurial and vocation skills to enable them create jobs.<sup>197</sup> Our study also shows that Nakuru County operationalised the AGPO programme to facilitate women, youth and PWDs to access County Government contracts, and started entrepreneurship programmes to impart business skills to members of these marginalised groups running small and medium-sized enterprises.<sup>198</sup> Besides training over 1000 PWDs on AGPO and awarding value tenders to PWDs in 2020/2021 under the foregoing programme,<sup>199</sup> Nakuru County also established the Ward Disability Fund to cater for PWDs and waived the payment of business permits for the special category.<sup>200</sup> For the study counties, business and self-employment through trades were part of the overall strategy for empowerment and inclusion.

All the study counties made serious investments in vocational training, mainly targeted at the youth. The investments took the nature of establishing polytechnics and vocational training centres, and funding and subsidising the education with the objective of equipping the learners with skills in certain trades and entrepreneurship generally. As the Garissa County Annual Developmental Plans for 2014/2015 and 2016/2017 show, the development of youth polytechnics was embedded in Garissa County Strategy firmly. The same is true of Kakamega County, which went beyond the construction, rehabilitation and equipment of youth polytechnics to set aside resources for grants, benefits and subsidies for the youthful learners in areas such as dairy, aquaculture and horticulture.<sup>201</sup> In one season, Nakuru County reported having 33 functional vocational training centres and seven others awaiting

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197 *Nakuru County annual development plan 2021/2022*, 242.

198 See, for instance, *Nakuru County annual development plan 2021/2022*, 115.

199 See, also, *Nakuru County annual development plan 2019/2020*, 85.

200 *Nakuru County annual development plan 2016/2017*, 56.

201 See, *Kakamega County annual development plan 2017/2018*, 29; and *Kakamega County annual development plan 2022/2023*, 21.

opening.<sup>202</sup> Nakuru County also started digital centres that were installed with PWD-friendly programs.<sup>203</sup> In addition to operationalising youth centres,<sup>204</sup> Narok County put in place a scholarship fund for the youth in collaboration with the Kenya Commercial Bank (KCB) Foundation,<sup>205</sup> and awarded bursaries for PWDs.<sup>206</sup> Mombasa County allocated resources for rehabilitating youth polytechnics,<sup>207</sup> constructed vocational training institutions,<sup>208</sup> set up a talent academy,<sup>209</sup> started libraries (one for each ward),<sup>210</sup> established youth empowerment centres in every ward,<sup>211</sup> and instituted the Elimu Fund to offer bursaries and scholarships to needy students.<sup>212</sup> Although the bulk of the education and vocational training programmes focused on the youth, they were relevant to women and PWDs because they also belong to that age category.

Instead of deploying heavy machinery, some study counties implemented labour-intensive public works programmes to create employment opportunities for women and youth, to spur the local economies, and for the governors and MCAs to earn the political loyalties

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202 Barut Youth Polytechnic, Chemare VTC, Cheptuech Vocational Training Centre, Dundori VTC, House of Plenty Vocational Training Centre, Kikopey Vocational Training Centre, Lion, Hill Vocational Training Centre, Mirera Vocational Training Centre, Molo VTC, Muteithia VTC, Nakuru Youth Polytechnic, Rongai VTC, Saptet VTC, Subukia VTC, Wanyororo VTC, Chepkoburot AGPO (Youth) Polytechnic Kiptororo, Ndabibi Polytechnic, Menengai Polytechnic, Ogilgei Polytechnic, Mawingu Youth Polytechnic Mworoto Youth Polytechnic, Langwenda Youth Polytechnic, Sitoito Polytechnic, Rhonda Resource Centre.

203 *Nakuru County approved MTEF budget estimates FY 2017-18*, 143.

204 The other vocational training centres in Narok include; Naroko, Neiregei Enkare, Elenerai, Kapweria, Kilgoris, Olereko, and Romosha.

205 *Narok County integrated development plan for 2018-2023*, 94.

206 *Narok County integrated development plan for 2018-2023*, 94.

207 Mombasa County Government, *Second County integrated development plan (2018-2022)*, 9, 13, 100, 101, 207, 101; College and vocational training centres in Mombasa County.

208 Mombasa County, *Second County integrated development plan (2018-2022)*, 9, 13, 100.

209 Mombasa County, *Second County integrated development plan (2018-2022)*, 147.

210 County Government of Mombasa, *annual development plan 2021/22*, 114.

211 Mombasa County, *Second County integrated development plan (2018-2022)*, 115, 117.

212 Mombasa County, *Second County integrated development plan, (2018-2022)* 13, 101.



of their constituencies. For instance, through the Roads, Public Works and Energy Department, Kakamega County allocated 350 000 000 to enhance labour-based methods in road maintenance in 2022/2023.<sup>213</sup> Such approaches were tested at the national level previously through programmes like Kazi kwa Vijana with notable success.<sup>214</sup>

To enhance sports, the study counties i) dedicated special directorates to such activities, ii) organised and supported the participation of teams in sports tournaments, iii) built sports grounds, stadia and other sports facilities, iv) purchased sports equipment, v) established special sports funds, and vi) trained sportspeople and coaches with the mind of harnessing the energies of the youth both for trade and leisure. Nakuru County's Directorate of Sports exemplified i), while Garissa County's Eid Tournament and the Inter-County Cap Tournament were typical illustrations of ii), just as the County Governor's Cup, Paralympics, Deaflympics, and the national Kenya Inter-County Sports and Cultural Association Tournaments,<sup>215</sup> which Nakuru County spearheaded.<sup>216</sup> Under iii), Kakamega County's Bukhungu Stadium, Mombasa County's Cross Country Track<sup>217</sup> and Uwanja wa Mbuji Stadium,<sup>218</sup> and Narok County's Ole Ntimama Stadium<sup>219</sup> stand out. The study counties also purchased sports equipment for several teams and more

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213 See, *Kakamega County Annual Development Plan (CADP) for 2022/2023*, 21.

214 Ted M Odhiambo, 'Effects of government structural policies on youth employment within public sector in Kenya: A case study of Kenya youth employment programme' 2(33) *Strategic Journal of Business and Change Management* (2015) 626.

215 *Garissa County development plan 2019/2020*, 66.

216 Some study counties facilitated the participation of teams of PWDs in the annual desert wheel race in Isiolo. See *Garissa County Magazine 2022*, 63. Kakamega County supported persons with disabilities' deaf team to participate in the National Deaf Competitions in the 2021/2022 financial year. See, *Kakamega County Annual Development Plan FY 2022/2023*, 100.

217 Mombasa County Government, *First County integrated development plan 2013-2017*, 201, See also *Mombasa County integrated development plan 2018-2022*, 49.

218 Mombasa County Government, *First County integrated development plan 2013-2017*, 201, See also *Mombasa County integrated development plan 2018-2022*, 49.

219 *Narok County integrated development plan for 2018-2023*, 93.

notably PWDs as part of iv).<sup>220</sup> Nakuru County's Ward Sports Fund,<sup>221</sup> and the training of football coaches envisioned in Kakamega County's County Annual Development Plan (CADP) are good examples of v) and vi) respectively.<sup>222</sup> Counties showed an encouraging interest in sports, and it may be just a matter of time before real talents emerge from the many innovative approaches being attempted.

The study county governments also gave the health mandate noticeable attention, and introduced special programmes for the benefit of women, youth and PWDs. Even the most cursory survey of the health programmes of the study counties will reveal projects such as: public health education activities on drugs and substance abuse,<sup>223</sup> and communicable diseases like HIV/AIDS; health facilities for addressing gender-based violence (GBV) including gender desks<sup>224</sup> and rescue centres<sup>225</sup>; health facilities for ante-natal and post-natal healthcare;<sup>226</sup> HIV/AIDS prevention and treatment measures, which extended to testing, prevention of mother to child transmission, and dispensation

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220 See, for instance, the *Kakamega County annual development plan FY 2022/2023*, 134.

221 Nakuru County Revenue Allocation Bill 2018, Section 16 (5) (a), *Nakuru County approved budget estimates for year 2021/2022*, 294.

222 *Kakamega County annual development plan FY 2022/2023*, 100.

223 See, for instance, *Kakamega County annual development plan FY 2017/2018*, 37.

224 Mombasa County established a gender-reporting desk to handle cases of defilement, rape and physical abuse. Maarifa Centre, 'Mombasa County opens a toll-free line and sets up a situation room for survivors for gender based violence prevention and reporting', 25 August, 2022.

225 Kakamega County established the Shinyalu GBV Rescue Centre complete with safe room, laboratory and clinical facilities. See, *Kakamega County annual development plan FY 2022/2023*, 100. Similarly, Nakuru County constructed a gender-based violence centre in Molo, and expanded another such centre in Gilgil. *Nakuru County annual development plan for Year 2020/2021*, 236. *Nakuru County annual development plan 2019-2020*, 167.

226 Nakuru County has facilitated free maternal healthcare, including scaling up maternal, neonatal and children health and sensitised community health volunteers on early antenatal clinic attendance. *Nakuru County annual development plan 2021/2022*, 51, 53; *Nakuru County annual development plan 2019/2022*, 133, 134; *Nakuru County annual development plan 2017/2018*, 29.

medication;<sup>227</sup> reproductive health interventions like cervical cancer screening;<sup>228</sup> medical insurance covers;<sup>229</sup> and drives for wheelchairs and assistive devices for PWDs.<sup>230</sup>

Of all the programmes in study counties, Kakamega County's Afya ya Mama na Mtoto Care Programme (Oparanyacare) was perhaps the most innovative. Started in 2013, and supported by UNICEF,<sup>231</sup> the original objective of the programme was to address the high maternal and child mortality rates in the County caused partly by lack of access to skilled antenatal and post-natal care services. Thus, the Oparanyacare package incorporated ante-natal care, skilled delivery, post-natal care in County health facilities and the nutrition of the new-borns, among others. As at the time of our research, the package included a monthly grant of Ksh 2000 for every eligible woman who attended the County health facilities as advised. According to Kakamega County records, in 2021 alone, over 45 000 mothers accessed ante-natal and post-natal care services, skilled delivery and the full package of child welfare services. Among these numbers were 5085 needy mothers who were also put under a cash transfer programme to enable them meet the essential needs of their new-borns and themselves. Without rating the performance of the

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227 See, for instance, *Kakamega County annual development plan FY 2020/2021*, 108; County Annual Development Plan (CADP) Financial Year 2022/2023, 62. Mombasa County initiated a prevention of mother to child transmission programme (PMCT) to prevent transmission of HIV/AIDS from mothers to new-borns. They have facilitated the programme by testing mothers for HIV/AIDS in the first antenatal clinic (ANC) visit and providing ARVs to HIV positive mothers to reduce the risk of transmission. See, also, Mombasa County Government, *First county integrated development plan 2013-2017*, 180, See also, *Mombasa County integrated development plan 2018-2022*, 47.

228 Nakuru County reported that it facilitated 20% of women in the reproductive age to get free cervical cancer screening. See, *Nakuru County annual development plan 2019-2020*, 47.

229 For instance, Narok County planned to put all PWDs under the National Hospital Insurance Fund (NHIF). *Narok County integrated development plan 2018-2023*, 151.

230 See, *Garissa County Magazine 2022*, 63; *Kakamega County annual development plan FY 2022/2023*, 99. See, also, *Nakuru County annual development plan 2020-2021*, 127. Also, Inclusivity Features, 'Kakamega county disability inclusivity tracking', 4.

231 *Kakamega County annual development plan FY 2022/2023*, 60.

study counties in their delivery on the health mandate, the conclusion that formidable and sometimes innovative interventions were made for the marginalised groups (especially in Kakamega, Mombasa and Nakuru) is inevitable.

## Conclusion

At the close of the first decade of county governance, the question whether devolution has delivered for women, youth and PWDs can now get a general and more detailed answer. The general answer is simple, *yes devolution delivered*. The institutions of devolved governance such as the county assemblies and CECs included women, youth and PWDs, just as we hypothesised at the very beginning, although not always on point. The more detailed answer requires a bit of nuance and takes us back to the original questions, whether: i) the institutions of county governance incorporated members of the marginalised groups; ii) the counties enacted laws and policies that are responsive to the rights and welfare of the marginalised groups; and iii) the counties initiated projects that resonate with the needs of the marginalised groups.

### *Whether the institutions of county governance incorporated members of the marginalised groups*

Women, youth and PWDs were all included in county assemblies and CECs although not optimally. As the above analysis showed, at 5.1% or 6.3% of the total elected members in 2013 or 6.8% in 2017, the representation of women in the county assemblies through ballot was below par going by the rate of inclusion of the youth in the same institutions, the performance of women in national legislative institutions, and the constitutional 2/3 gender threshold. Although the 2017 General Elections registered better results than the 2013 General Elections, the situation remained bad in counties like Garissa and Narok, which, due to cultural or religious challenges, ran an entire decade without an elected female MCA. Women also scored poorly in the

elections for governor in 2013, winning none, but they did better in the deputy governor positions, and improved markedly in the governors' positions in 2017 when three women won.

Women's dismal performance at the ballot triggered the gender top-up formula to bridge the huge deficits leading to a situation where women dominated the list of nominated MCAs country-wide. While this helped to meet the 2/3 gender rule, it had a number of shortfalls including strengthening the view that nominated MCAs are of a lower cadre and therefore unsuitable for leadership positions in the county assemblies. The nomination path also comes without a ward, fund or kitty, which are usually the symbols and enablers of power at those levels. These inadequacies of the offices of nominated MCAs explain the difficulty such women faced in their attempts to win subsequent electoral contests. Despite the nominated women MCAs hardly converting their advantage to victory in subsequent elections, in positions such as MP or governor, women did better where they had occupied State or public offices previously. We took this to be an illustration of the need to elect or nominate or appoint women to strategic positions with an eye on future electoral contests.

In terms of leadership of the legislative institutions, it was evident that some women MCAs chaired committees of the county assemblies with some taking charge of committees that are usually thought to be important. In rare but increasing occasions, some women were elected to the positions of speaker and deputy speaker. Women were also appointed to the CECs although many counties failed to meet the constitutional 2/3 gender rule when making such executive appointments. Contrary to the dominant view that women are usually assigned only the inferior departments like social services, we have reported instances where women CECMs were appointed to both important and inferior portfolios.

The youth (especially male youth) outperformed women in the electoral contests for the MCA positions and not more. Compared to the women, the youth performed poorer in the leadership of county assembly committees, speakership, governor and deputy governor

and appointments to the CECs. However, it emerged that a number of nominated youth used the vantage-points of their positions to advance in their political carriers by winning subsequent electoral contests hence our support for affirmative action measures. Even then, our research had to reckon with absence of desegregated data on the youth, which also affected our analysis on the inclusion of PWDs.

Available information points to a poor show by PWDs in the electoral contests for the MCA seats and in all other devolved governance positions. Yet the constitutional affirmative action measures designed to include the PWDs such as the 5% rule and the few seats reserved for them in Parliament were not adhered to. We also found that there could be hierarchies even among the PWDs with men with physical disabilities outwitting women with the same disabilities and persons with other disabilities such as intellectual or mental.

Going forward, we recommend that political parties and the IEBC should adhere to the 2010 Constitution and other laws during the nomination of candidates to the various positions. Other possibilities outside the political parties should also be considered to tame the tendency by political parties to exclude members of the marginalised groups including from their constitutionally-guaranteed positions. At the same time, vigilance on the part of the citizens is what constitutional implementation demands. Without it, the same forces that bend towards centralisation and exclusion will reign unchecked to the detriment of the marginalised groups. Vigilance during transitions caused by death, impeachment or resignations is also critical in ensuring that the hard-won gains are not lost.

Without accurate data on the performance of the marginalised groups, progress will be difficult to measure and therefore impossible to attain. It is time institutions like the IEBC, national human rights institutions, political parties, research institutions including universities kept accurate statistics on the marginalised groups. Priority should be given to the youth and PWDs whose important information remains in abeyance.

Also flowing from our findings is that the gender top-up formula applied to the counties has already proved itself. Therefore, we recommend it to Parliament as it considers the legislation envisioned under Article 100 of the 2010 Constitution.

Since judicial jurisprudence was both useful and negligent, courts may want to continue with some of the innovative interventions discussed in this study as they review certain negative jurisprudence that appears to elevate technicalities of procedure over justice.

Finally, cultural or religious dialogues are needed in areas where the gender agenda has aborted for those reasons. Such dialogues could benefit from the discussion in the conceptual chapter on how to harness culture for the good of all.

*Whether counties enacted laws and policies that are responsive to the rights and welfare of the marginalised groups*

Many county laws were enacted to cater for the rights and the welfare of the selected marginalised groups. Our study reviewed many legislations, which touched on affirmative action measures to enable the marginalised groups to be included in the various institutions established the county level; special funds meant to uplift the economic wellbeing of the marginalised; affirmative action measures in county procurement procedures; maternal and ante-natal healthcare; and other special measures to ensure the accommodation of PWDs.

*Whether counties initiated projects that resonate with the needs of the marginalised groups*

County programmes related to the selected marginalised groups tended to provide business and investment opportunities, offer education and vocational training, involve them in public works, and sports, and cater for their health and general welfare.

In summation we can conclude with confidence that yes, the constitutional system of devolution has begun the arduous task of reversing the century-old history of exclusion and marginalisation of women, youth and PWDs in Kenya. However, such a promising start will require vigilance and the consorted efforts of all to be sustainable.

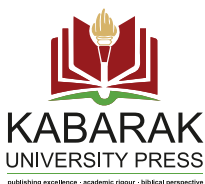


# Decentralisation and inclusion in Kenya

This book records a year-long study conducted by researchers from Kabarak University Law School and Heinrich Boll Foundation across five counties (Mombasa, Garissa, Narok, Nakuru and Kakamega) that sought to assess the impact of the first decade of devolution on the inclusion of women, youth and persons with disabilities in governance structures in Kenya. Two variables preoccupy this entire study – decentralisation and inclusion. The book hypothesises that there is a positive relationship between decentralisation and the inclusion of the various groups; that the more we decentralise the more we include. That the converse is also true: the more we centralise the more we marginalise.

What emerges clearly from the expositions in the volume are the historical struggles for decentralisation and inclusion by those on the outside, and efforts to congest more powers at the centre and to exclude the others by those on the inside. However, the clamour for decentralisation and inclusion won a major battlefront when the 2010 Constitution, which entrenches devolution as one of the overarching principles, among other transformative provisions, was promulgated.

At the close of a decade after the operationalisation of devolved governments, time is ripe to evaluate the original promise of devolution to democratise and include the marginalised groups. But has devolution delivered on these fronts? This edited volume explores this and other relevant questions after a decade of devolution's career.



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