



MZALENDO



POLICY BRIEF

KENYA'S UNRESOLVED REFORM AGENDA

AHEAD OF THE 2027 GENERAL ELECTIONS

#KURA 2027

Published by
MZALENDO TRUST
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Nairobi, Kenya
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Website: www.mzalendo.com

Supported by:

The European Union through the Promoting Inclusion on
Electoral Reforms in Kenya (PIERK) Consortium

Acknowledgements

We acknowledge valuable technical direction from Mzalendo staff; Edward Kakumu, Benjamin Mwamburi, Fredrick Ajok, Jefferson Gathumbi, Adisa Viola and Executive Director Caroline Gaita.

In addition, we acknowledge the author of the policy brief Philip Gichana who dedicated his time and experience to produce this brief, as well as the PIERK Consortium for providing crucial insights to improve the publication.



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Preface

Kenya's journey toward a robust and transparent electoral system has been a story of resilience, high-stakes reform, and persistent challenges. Since the reintroduction of multiparty democracy and the landmark promulgation of the 2010 Constitution, the nation has sought to ground its governance in the principles of accountability, inclusivity, and the sovereign will of the people. However, as history has shown, electoral reform in Kenya has frequently been a reactive process, catalyzed by political crises and elite-driven settlements rather than steady, institutional evolution.

While the 2010 Constitution provided a transformative blueprint for electoral governance, a significant gap remains between constitutional theory and administrative reality. The aftermath of the 2022 General Election and the subsequent National Dialogue Committee (NADCO) process underscored a familiar cycle: a period of intense contestation followed by bipartisan negotiations that yield ambitious reform proposals. Yet, to date, with only one of the nine proposed NADCO Bills passed into law and the next general election rapidly approaching, the window for systematic institutional strengthening is closing.

This policy brief, commissioned by Mzalendo Trust, arrives at a critical juncture in Kenya's democratic trajectory. It seeks to move beyond reactive "handshake" politics by providing a technical and evidence-based analysis of the most pressing unresolved issues in our electoral framework. The brief delves into five core pillars of reform:

- 1. Boundaries Delimitation:** Navigating the legal and technical complexities of the Supreme Court advisory and the IEBC's mandate.
- 2. The Two-Thirds Gender Principle:** Moving from legal rhetoric to pragmatic pathways for equitable representation in elective positions.
- 3. Campaign Financing:** Addressing regulatory gaps and the influence of money in politics to ensure a level playing field.
- 4. The Recall of Members of Parliament:** Refining the legal framework to enhance voter oversight and legislative accountability.
- 5. Political Party Inclusivity:** Strengthening the internal democracy of parties to ensure they reflect the diversity of the Kenyan people.

By situating these technical reforms within Kenya's current political economy and drawing on regional best practices, this brief offers actionable recommendations for policymakers, civil society, and reform coalitions. It is our hope that the insights contained herein will contribute to an electoral system that inspires public trust and upholds the integrity of the Kenyan vote.



POLICY ONE:

ELECTION CAMPAIGN FINANCING IN KENYA: THE HITS AND MISSES IN THE QUEST TO REGULATE FUNDING OF POLITICAL AND IDEOLOGICAL MOBILIZATION

1.1. Introduction and Context

At the heart of democracy is free and fair elections. They provide an avenue for citizens to express their freedom to choose the kind of leaders that they want to govern on their behalf. Political competition based on freedom of choice is one of the pillars of democracy. Political competition is demonstrated through election of members to represent respective constituents in legislative assemblies or to determine particular public policy issues through voting at a referendum. Political competition entails mobilization of citizens or residents of a locality through campaign process so as to influence individuals' decision making in favor of a given political candidate or a certain policy position or ideology.

Election campaign financing is therefore a core component of any electoral process as candidates have to finance their election campaign activities from party nomination all the way to the ballot.

1.2. What is election campaign financing?

Campaign financing refers to all funds raised and spent in order to promote candidates, political parties or policies in elections, referendums, initiatives, party activities and party organizations[1]. It greatly varies in different countries depending on the regulations around campaign spending but generally there are two sources of funding for parties and candidates: public financing and private financing.

Private funding is mainly derived from funding by individuals, political parties, political party membership fees, organizations that finance political processes, party or candidate's fundraising activities such as sale of publications and campaign materials, sale of political party assets and social events. Public funding mainly consists of funding from exchequer for example as stipulated under Political Parties Act[1]. The main purpose of election campaign financing is to defray costs associated to the campaigns such as transport and logistics, campaign meetings, campaigner's costs, publications and materials, media campaign and other related incidentals.



Since elections are critical in choosing the kind of leaders that form a government, their financing may lead to compromise of political leaders' decision making on governance processes. Due to the high costs related to campaigns candidates have devised clever ways to raise funds including venturing into illegal activities and accepting money from sources likely to be traced money laundering activities, this in turn compromises the integrity of political leadership and now it has become an exclusion factor for the participation of youth, women and People Living with Disabilities (PWDs) who are generally not likely to access such funds.

Campaign financiers may be individuals or organizations that engage in illegal activities hence desiring to seek protection from political leadership upon victory after an election. In addition foreign governments or organizations may also seek to finance candidates or political parties so as to influence elections outcome. In the 2017 elections in Kenya very curious personalities were cited as being the financiers of the two forerunners into the election and candidates with questions on integrity managed to win some seats by flooding the elections with money (Attiya, 2018).

1.3. The implications of unregulated political financing in Kenya?

Recent studies on the cost of politics in Africa show that running for office is becoming increasingly expensive and that rising costs in competitive elections are a challenge to participatory electoral democracy. According to Prof. Waris Atiya, there are predominantly three cadres of people who get into politics in Kenya i.e. accomplished lawyers, successful businessmen and retired senior servants (Attiya, 2018). The picture is gloomy considering how many women and youth make it from those fields and generally in politics.

A background study on the cost of parliamentary politics highlighted a trend, characterized by a high cost for running in parliamentary elections. The study observed that the cost of managing elections in Kenya is one of the highest in the world at US\$25 per voter^[1]. Kenya's parliamentarians are also some of the most highly paid individuals in the society, and this on its own attracts numerous interests, creating intense competition to win an election. All the same, until now, there has been little systematic data on what it costs to run for different electoral seats and the implication of these costs for public participation and social economic development in general.

Mboya, T. 2020. "The Cost of Parliamentary Politics in Kenya". Westminster Foundation for Democracy

[1] <https://aceproject.org/ace-en/focus/campaign-finance/onePage>

[1] Part 111 of the Act creates the Political Parties Fund, sources of funds and distribution of the funds to political parties



In Kenya, the main hindrance is the candidate-selection process where candidates have to pay fees to participate in the party-nomination process and this phase constitutes a huge obstacle to women and youth due to the importance of early money in winning the party nomination. In 2017 and 2022 campaigns, candidates in some constituencies had to spend more money during the party primary campaigns than in the general election, and the lack of financial resources ruled out many women and young people who were unable to get past the party primary barrier. This pattern is attributed to the big party's strongholds where the party primaries were like the main elections.

The introduction of the women county representative system under the 2010 Constitution led to a significant increase in the representation of women in parliament, but also resulted in a decrease in the proportion of women holding constituency seats, which were now perceived as men's seats. The lack of political party support in terms of financial resources and access to political networks remains a tremendous obstacle to women entering politics.

1.4. Legal framework of campaign financing regulation and status

Historically, Kenya had limits on campaign spending by parties, which was removed in 1992, before the first multiparty elections (Human Rights Watch Report, 1993). A 1979 Amendment to the Election Laws (Amendment) Act capped campaign expenditures at Kshs 40,000 but this was not effectively implemented. However, in 1999, parliament approved a bill for state funding of political parties. The raising of funds by parties and candidates was a matter of self-help or harambee until then. As a result, political financing has largely remained under-regulated in Kenya.

Fast forward to 2010 when the Constitution of Kenya 2010, laid the foundation for campaign financing in Kenya. Art. 88 (4) (i) grants power to the Independent Electoral and Boundaries Commission (IEBC) to regulate the amount of money that may be spent by or on behalf of a candidate or party in respect of any election.

Art. 91 (2) (e) provides for prohibition of political parties from accepting or using public resources to promote party interests or supporting candidates in elections. Further, Art. 92 (a) provides for enactment of legislation to provide for;



- Reasonable and equitable allocation of airtime, by state owned media and other mentioned categories of broadcasting media, to political parties either generally or during election campaigns
- Establishment of political parties fund
- Restriction of use of public resources to promote interests of political parties (which may include campaign financing)

Election Campaign Financing Bill 2013 was enacted into law in December 2013 after the general elections that were held in March that year. The framework deals with regulation of contributions limits, disclosure and reporting and campaign expenditures. The Act provides for among others–

- Powers of the Independent Electoral and Boundaries Commission in regard to regulating campaign financing which includes; making rules for regulating campaign financing and oversight over campaign financing.
- Regulation of campaign expenditure in terms of activities that can be financed under the Act
- Regulation of sources of campaign contributions including prohibition of certain sources of funding
- Disclosure and reporting in relation to sources of funds and expenditure
- Establishment of campaign committees.

To operationalize the Act, IEBC was required to develop Regulations to be gazetted at least one year before a general election and in the case of a by-election or referendum, at such a time as the Commission may determine[1]. IEBC gazetted the Election Campaign Financing Regulations 2017 but the Committee on delegated Legislations rejected the Regulations on the basis that they had not been gazetted within the stipulated timelines. While making amendments to electoral law ahead of the general election, the National Assembly suspended the Election Campaign Financing Act, 2013 and the same scenario was further witnessed in 2022.



1.5. Petition No. E540 & E546/2021

Aggrieved by Parliament's decision to reject the IEBC Regulations, CSO's led by Transparency International, approached court seeking orders to declare Parliament's decision to annul the Regulations unconstitutional, some provisions of the Act unconstitutional and an order declaring election campaign financing Regulations as constitutional instruments and not statutory instruments among other orders. The court rejected the argument that the Regulations were Constitutional instruments and reiterated that they were governed by the Statutory Instruments Act and IEBC had failed to conduct public participation as required under the Act. However, the Court agreed with the Petitioners that Sec. 29 which required IEBC to lay Regulations before Parliament before they are gazetted was unconstitutional as it gave Parliament powers akin developing regulations which was a preserve of IEBC. The court stated that Sec. 29 of the ECF was unconstitutional as it usurped the powers of IEBC in developing Regulations while also declaring that spending caps under Sec. 12, 18 & 19 do not call for parliamentary approval but must be subjected to appropriate public engagement^[1].

1.6. Policy Problem

While the Kenya has robust Constitutional provisions to regulate election campaign financing, the statute enacted to operationalize the provisions has inherent challenges making it impossible for IEBC and even candidates to comply with the provisions of the Act, some of the key challenges include;

- The requirement to develop Regulations 12 months into an election which creates an onerous task for IEBC considering the election cycle calendar which is very heavy during the indicated timelines.
- The creation of Expenditure Committees creates an unnecessary burden for political actors, which negatively impacts on accountability.
- Exclusion of other regulatory bodies in charge of ensuring financial integrity in Kenya e.g. the Financial Reporting Center (FRC), Ethics and Anti-Corruption Commission (EACC) among others.
- Inadequate capacity within the IEBC monitor, regulate and enforce election campaign financing requirements alongside other constitutional mandates.

[1] Section 5 of the Elections Campaign Financing Act

[1] Transparency International and two others, Pet. No. E540 & E546/2021



1.7. Policy Recommendations

There is need for;

- IEBC should engage all stakeholders in developing new Regulations for 2027 according to the prevailing circumstances and practicalities in the Country i.e. political parties, candidates, implementing agencies/ commissions and most importantly the candidates and citizens.
- IEBC should create an Ad hoc Multi stakeholder Working Group from the Financial Regulators and key actors help in tracking, tracing and freezing of unallowable/suspicious funds deployed for elections.
- CSOs and other actors should run campaigns encouraging citizens to own a candidates i.e. develop manifestos and fund their preferred candidate's campaigns.
- Parliament to amend the Election Campaign Financing Act, specifically Sec. 29, to make it implementable in the Kenyan context and in line with the Court decision in Petition No. E54O & E546/21.





Country	Donation Limits	Spending Limits
Austria	Austria In general no limits, but provinces may enact stricter rules.	Federal Presidential candidates: €7 million. Political parties: €7 million (about US\$7.6 million). Individual candidate's spending counts toward party limit unless sum does not exceed €15,000 (about US\$16,300).
Canada	Political parties & candidates: Up to \$1,525 per calendar year.	Candidates: Calculated according to formula involving number of electors in the district, geographic size of district, length of election period, and an inflation adjustment factor. Political parties: Calculated using formula that involves the number of electors in districts in which a party has candidates, length of election period, and an inflation adjustment factor. Others(individuals, corporations, or groups not standing in election): Can\$150,000 (about US\$112,880) "base limit" on election advertising by third parties in 37-day election period, with base limit of Can\$3,000 in particular electoral district. Increased if election period exceeds 37 days.



Country	Donation Limits	Spending Limits
Finland	Candidates for Finnish Parliament: Up to €6,000 (US\$6,500) per election from same donor; unlimited from party and party organization provided amount does not include contributions received from donor exceeding cap. Presidential candidates: No limit. Political parties: Up to €30,000 (US\$33,000) from same donor per calendar year.	None.
Israel	Primaries: Limits generally based on number of eligible voters and position for which candidate competes. National Elections: Candidate list or faction that notified of its intention not to receive government funding may receive higher amounts.	Calculated according to formula involving multiplication of set monetary amount by number of Knesset (Parliament) members a faction has on specified date.
Japan	Annual limits on individuals' donations: Per candidate: 1.5 million yen (about US\$13,000), up to 10 million yen (about US\$90,000). To political parties: 20 million yen (about US\$180,000). Corporate & other nonpolitical donations permitted only for parties and political funding organizations, not to candidates, subject to annual caps depending on donor organization's size. Annual limit ranges from 7.5 million yen (about US\$66,000) to 10 million yen (about US\$90,000). No limit on donations by political organizations to a political party or funding organization.	House of Councilors candidates chosen by proportional representation: 52 million yen (about US\$458,000). House of Councilors candidates in plural-seat districts: limit calculated using formula involving number of voters in the district and the number of elected members, plus a base amount. House of Representatives candidates in single-seat districts: limit calculated using formula involving similar aspects as for the House of Councilors formula. No limit for House of Representatives candidates chosen by proportional representation as all campaigning is for the party rather than individual candidates.



Country	Donation Limits	Spending Limits
New Zealand	Generally no limits on donations to candidates or parties from NZ-based sources. An anonymous donation or overseas donation to candidate or party cannot exceed NZ\$1,500 (about US\$990).	In 3 months before election: Candidates: NZ\$26,100 (about US\$17,240). Parties: NZ\$2,964,100 (about US\$1,959,000), if have candidates in all 71 electorates. Others (individuals, corporations, or groups not standing for election): NZ\$313,000 (about US\$207,000).
United Kingdom	No limits on donations from "permissible donors" (UK-based). Nonresident donors limited to £7,500 (about US\$10,000) to a party.	Candidates: - Long campaign (starts 55 months from time Parliament first met, ends on date of dissolution of Parliament, when short campaign generally begins): £30,700 (about US\$43,700) plus 9p (about \$US0.13) per voter in rural constituencies and 6p in borough seats. - Short campaign: Limits reduced to £8,700 (about US\$12,380) plus 9p per voter in rural constituencies & 6p in borough seats. Parties: Either £30,000 (about US\$43,000) per constituency/seat contested or maximum amount for each part of UK, whichever is greater. Others (individuals or groups not standing in election): Up to £500 (about US\$700) to promote or disparage candidate. In 365 days before election, "recognised third parties" can spend up to £319,800 (about US\$456,000) in England, £55,400 (about US\$79,000) in Scotland, £44,000 (about US\$63,000) in Wales, and £30,800 (about US\$44,000) in Northern Ireland.

Adopted from: US Congress, 2016. *Regulating Campaign Financing and Free Advertising*

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3. Constitution of Kenya, 2010
4. (Human Rights Watch Report , 1993
5. Election Campaign Financing Act, 2013

STRENGTHENING INCLUSIVITY IN THE POLITICAL PARTIES ACT AND INTERNAL PARTY REGULATIONS IN KENYA

2.1 Introduction and Context

Political parties are the primary vehicles through which citizens organize for political participation, representation, and leadership. Inclusive political parties are therefore essential to ensuring that leadership and decision-making structures reflect the diversity of society. Kenya's democratic transition, culminating in the Constitution of Kenya (2010), introduced transformative principles aimed at strengthening political representation, transparency, and equality. These principles are reinforced through electoral legislation, including the Political Parties Act, which regulates party formation, governance, and accountability under the oversight of the Office of the Registrar of Political Parties (ORPP).

Why this policy Matters



Political Parties

They are the primary vehicles for representation, leadership and democratic participation



Legal Framework Exists

The Constitution (2010) and Political Parties Act promote transparency, equality and accountability.



Inclusivity Gap Persists

Women, youth and persons with disabilities remain underrepresented in party leadership structures.



Reform Momentum

The 2022 General Election and NADCO reform agenda renewed calls for stronger internal party democracy.



2.2 Evidence from Political Party Assessment

A participatory assessment conducted in 2025 by Westminster Foundation for Democracy – Kenya (WFD) examined internal democracy within Kenyan political parties.

Assessment Overview

✓ Internal Democracy
✓ Leadership Selection Processes
✓ Organizational Transparency
✓ Inclusivity Practices
✓ Member Participation

Major Findings

 Centralized Decision-Making Most parties have highly centralized structures with power concentrated among a few individuals.	 Limited Transparency Nomination and candidate selection processes lack clarity and are not consistently published.	 Low Member Participation Members, especially women, youth and persons with disabilities, have limited influence in key decisions.
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2.3. Key Inclusivity Challenges

2.3.1. Uneven Representation of Marginalized Groups

Political parties differ significantly in their ability to incorporate diverse demographic groups into leadership and decision-making structures.

 UGM Demonstrates comparatively strong inclusivity, with accessible membership structures and leadership representation reflecting diverse demographics	 KANU Despite its extensive grassroots networks, shows slower integration of youth in branch-level leadership.	 TWP Has limited national reach but has made efforts to broaden membership participation across demographic groups.
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NRA & PPOK

Recognize demographic representation in their constitutive documents but show limited implementation in practice.

2.3.2 Centralized Decision-Making and Limited Competitive Leadership Processes

Although most parties maintain defined leadership hierarchies, internal elections and nomination processes vary widely.



KANU

Maintains relatively competitive internal election processes due to its longstanding grassroots institutional structures.



Emerging Parties

Emerging parties such as TWP, NRA, and PPOK frequently rely on direct nominations or consensus-based leadership selection, which limits broader membership participation.

These practices can reduce opportunities for emerging leaders from marginalized groups to access leadership positions.



2.3.3 Weak Operationalization of Party Governance Structures

Most parties have formal governance organs such as, National Executive Committee, National Delegates Conferences, Elections Boards and Disciplinary Committees. However, the assessment identified institutional dormancy in several governance bodies, particularly elections boards and disciplinary committees. This weakens transparency, accountability, and participatory decision-making.



Governance Organs Exist

Most parties have formal governance organs such as National Executive Committees, Delegates Conferences, Elections Boards, and Disciplinary Committees.



Weak Institutionalization

Many governance organs, especially elections boards and disciplinary committees, are either inactive, under-resourced, or not operational as required.



Limited Transparency

Weak operationalization undermines transparency, accountability, and fairness in internal party processes and decision-making



Reduced Participation

When governance structures are weak, members have limited influence over party policy, leadership selection, and overall direction.



2.3.4. Limited Institutionalization of Demographic Representation

Many parties provide for youth, women, and PWD leadership positions in their constitutions. However, these structures often:

 Women Positions exist but often lack meaningful decision-making authority and influence over party direction.	 PWDs PWD representatives are included in party structures but receive limited institutional and financial support.	 Youth Youth wings or leagues operate outside core decision-making organs, with limited influence on policy and strategy.
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2.4. Policy Problems

While the current legal framework promotes financial transparency and regulatory compliance, the Political Parties Act, 2011, does not sufficiently establish clear and enforceable standards for inclusivity within internal party governance structures. In addition, the Act does not adequately address intra-party financial barriers that can limit participation, particularly for marginalized groups, thereby exacerbating existing inequalities in access to leadership and decision-making platforms.

As a result:

- ▶ Inclusivity provisions remain largely declaratory rather than operational.
- ▶ Compliance with inclusive governance principles is inconsistently monitored.
- ▶ Political parties face limited incentives to implement inclusive governance practices.

Financial constraints within political parties continue to restrict optimal participation, especially in candidate selection and leadership growth within the party structure. Strengthening the legal and regulatory framework is therefore necessary to translate the equality and representation principles of the Constitution of Kenya into enforceable institutional practices within political parties. This includes introducing clearer standards on inclusivity, improving monitoring and enforcement mechanisms, and addressing intra-party financial barriers to enable equitable participation.



2.5. Policy Options

Several policy options could be pursued to strengthen inclusivity in political party governance.

2.5.1. Option 1: Introduce Statutory Inclusivity Quotas in the Political Parties Act, 2011

Description

Amend the Political Parties Act, 2011, to introduce minimum representation thresholds for women, youth, and persons with disabilities (PWDs) in political party leadership structures at national, county, and branch levels.

Possible provisions include:

- Minimum percentage thresholds for marginalized groups in key decision-making bodies such as National Executive Committees.
- Mandatory functional youth, women, and PWD leagues with representation in top leadership organs.
- Compliance requirements tied to party registration renewal or participation in elections.

Advantages

- Establishes clear and enforceable legal standards for inclusivity.
- Aligns party governance with the equality provisions of the Constitution of Kenya.
- Provides predictable benchmarks for monitoring compliance.

Limitations

- Political resistance from parties concerned about internal autonomy.
- Risk of symbolic compliance without meaningful empowerment.



2.5.2 Option 2: Introduce Performance-Based Public Funding Incentives

Description

Link a portion of allocations from the Political Parties Fund to measurable inclusivity indicators.

Possible indicators include:

- Representation of marginalized groups in party leadership structures.
- Evidence of inclusive participation in decision-making bodies.
- Transparent and competitive nomination procedures.

Advantages

- Creates financial incentives for reform without imposing rigid quotas.
- Encourages parties to invest in inclusive leadership development.
- May be politically more acceptable than mandatory quotas.

Limitations

- Requires reliable monitoring mechanisms.
- Smaller parties may face capacity constraints in meeting reporting requirements.

2.5.3 Option 3: Strengthen Regulatory Oversight and Compliance Monitoring

Description

Expand the monitoring mandate of the Office of the Registrar of Political Parties to track inclusivity within internal party governance.

Possible measures include:



- Mandatory annual inclusivity reports from political parties.
- Development of national guidelines on inclusive party governance.
- Periodic audits of internal democratic practices.

Advantages

- Improves accountability within the existing legal framework.
- Enables evidence-based monitoring of internal party governance.
- Strengthens regulatory enforcement capacity.

Limitations

- Requires additional financial and institutional resources.
- Effectiveness depends on enforcement authority and institutional independence.

2.5.4 Option 4: Regulate Internal Party Elections and Nomination Processes

Description

Introduce regulatory standards requiring transparent and competitive internal elections for leadership and candidate selection.

Possible measures include:

- Limits on the use of direct nominations.
- Mandatory publication of nomination rules and procedures.
- Independent oversight of party primaries where necessary.

These reforms could be introduced through amendments to the Political Parties Act, 2011 and regulations issued by the Office of the Registrar of Political Parties.



Limitations

- Impact depends on voluntary uptake by political parties.
- May produce slower change compared to statutory reforms.

2.6. Policy Recommendations

While several policy pathways exist, a combined reform approach is likely to produce the most sustainable improvements in political party inclusivity.

The following priority actions are recommended:

2.6.1. Amend the Political Parties Act to Introduce Inclusivity Thresholds

Parliament should amend the Political Parties Act 2011 to establish minimum representation thresholds for women, youth, and persons with disabilities in party leadership structures at national and sub-national levels ahead of the 2027 general elections.

2.6.2. Link Public Funding to Inclusivity Performance

Allocations from the Political Parties Fund should be partially tied to measurable indicators of inclusive governance, including leadership representation and transparent nomination processes.

2.6.3. Strengthen Oversight by the Registrar of Political Parties

The Office of the Registrar of Political Parties should be empowered and resourced to monitor compliance through reporting requirements, governance guidelines, and periodic audits.

2.6.4. Institutionalize Transparent and Competitive Nomination Processes

Political parties should be required to adopt transparent, rules-based, and competitive internal election procedures for leadership and candidate selection.



2.6.5. Support Internal Party Reform and Leadership Development

Civil society organizations and democracy-support initiatives should complement legislative reforms by supporting political parties in strengthening internal governance frameworks and developing leadership pathways for underrepresented groups.

2.7. Conclusion

Inclusive political parties are essential to strengthening democratic representation and ensuring that Kenya's political leadership reflects the diversity of its citizens.

Although the Constitution of Kenya and the Political Parties Act 2011 provide a foundation for democratic governance, gaps remain in translating these principles into enforceable standards within internal party structures. Evidence from various assessments shows that women, youth, and persons with disabilities continue to face barriers to meaningful participation in party leadership and decision-making.

The decision in *Kisochi v IEBC* in 2018 underscores these shortcomings, illustrating the consequences of a limited, non-purposive interpretation of laws relating to political inclusion. Despite an established legal framework, including provisions under the Elections Act and the Persons with Disabilities Act, political parties and the Independent Electoral and Boundaries Commission have not consistently ensured adequate representation of PWDs through party lists. This is reflected in the persistent absence of PWD representation in 22 county assemblies in both the 2017 and 2022 electoral cycles, highlighting a systemic policy gap that remains unaddressed.

Addressing these challenges will require targeted legal reforms, stronger regulatory oversight, and sustained institutional support for internal party transformation. In particular, there is need for clearer enforcement of party obligations in structuring inclusive nomination process and ranking party lists to secure representation of marginalized groups. Implementing these measures will help align party governance with constitutional values and contribute to a more inclusive, accountable, and representative political system in Kenya ahead of future electoral cycles.



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POLICY THREE:

ADVANCING THE REALIZATION OF THE TWO-THIRDS GENDER PRINCIPLE IN KENYA'S ELECTIVE POSITIONS

3.1. Executive Summary

The two-thirds gender principle, enshrined in the Constitution of Kenya, requires that no more than two-thirds of members of any elective or appointive public body be of the same gender. The provision was designed to address historical gender inequalities and promote inclusive governance. However, more than a decade after the promulgation of the Constitution, Kenya has yet to fully implement this requirement in elective positions.

Women currently constitute approximately 24.8% of Members of Parliament, which remains below the constitutional threshold. Although county assemblies generally meet the minimum one-third representation requirement, this is largely achieved through nominated seats rather than direct elections, reflecting persistent barriers to women's electoral success.

Structural challenges, including high cost of campaigns, gender-biased political party nomination practices, patriarchal cultural norms, violence against women in politics, and limited leadership pipelines, continue to restrict women's participation in electoral politics.

Several initiatives have been introduced to accelerate progress, including the Multi-Sectoral Working Group on the realization of the gender principle and reform proposals from the National Dialogue Committee (NADCO). Leadership initiatives such as the G7 Strategy and the County Assemblies 750 Strategic Roadmap also aim to strengthen women's representation at the county level.

This policy brief examines the persistent policy problem hindering the implementation of the gender principle and presents policy options and recommendations to accelerate progress. Key recommendations include introducing temporary special measures such as top-up seats, strengthening political party accountability mechanisms, reforming electoral systems, enhancing protections against political violence, and investing in long-term leadership development for women.



Achieving the constitutional gender threshold will require strong political commitment, legislative reform, institutional accountability, and sustained civic engagement to ensure that Kenya's governance institutions reflect the principles of equality and inclusive representation.

3.2. Introduction and Context

Gender equality and inclusive governance are central principles of Kenya's constitutional and democratic framework. The Constitution of Kenya introduced transformative provisions aimed at addressing historical inequalities in political representation, including the two-thirds gender principle which requires that no more than two-thirds of members of any public body be of the same gender.

The principle is grounded in the recognition that women have historically been underrepresented in political leadership and decision-making. By mandating gender balance, the Constitution seeks to ensure that governance institutions reflect the diversity of Kenya's population and promote equitable participation in public affairs. Kenya's commitment to gender equality is reinforced by several international and regional obligations. At the global level, Kenya is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the Beijing Platform for Action. Kenya has also committed to achieving Sustainable Development Goal 5, which promotes women's full participation in leadership and decision-making.

At the regional level, Kenya is bound by instruments such as the Protocol to the African Charter on the Rights of Women in Africa and the African Union Gender Policy, which encourage member states to strengthen women's political participation.

Despite this robust legal and policy framework, implementation of the two-thirds gender principle in Kenya, particularly in elective positions, has remained incomplete. This gap underscores the need for targeted policy interventions to accelerate progress toward gender parity in political representation.



3.3. Policy Problem

More than a decade after the adoption of the Constitution, Kenya has struggled to operationalize the two-thirds gender principle in elective positions.

In Parliament, women hold 82 of the 346 seats in the National Assembly (23.7%) and 21 of the 67 seats in the Senate (31.3%), resulting in an overall representation of approximately 24.8%, which remains below the constitutional requirement.

At the county level, while many county assemblies meet the one-third gender representation threshold, the majority of women Members of County Assemblies (MCAs) are nominated rather than directly elected. This indicates persistent barriers to women's electoral success.

Several factors contribute to the continued underrepresentation of women in elective leadership:

a). Legislative and Institutional Gaps

Parliament has repeatedly failed to pass legislation to operationalize the gender principle in elective seats.

b). Political Party Nomination Practices

Political parties often fail to nominate sufficient numbers of women candidates in competitive constituencies.

c). High Cost of Elections

Campaign financing requirements disproportionately disadvantage women candidates.

d). Patriarchal Norms and Cultural Bias

Persistent societal beliefs continue to associate leadership with masculinity.

e). Violence Against Women in Politics

Women candidates often face harassment, intimidation, and online abuse during elections. This consequently deters women from seeking elective positions.



f). Limited Leadership Pipeline

Insufficient mentorship and leadership development programs limit the number of women prepared to contest for political office.

These barriers collectively hinder the realization of the constitutional gender principle and undermine inclusive governance.

3.4. Policy Options

Several policy options can be considered to accelerate the realization of the gender principle in elective positions in Kenya.

3.4.1. Option 1: Introduce Temporary Special Measures

Parliament could introduce temporary top-up seats for women by amending Articles 97 and 98 of the Constitution of Kenya (2010) to ensure compliance with the two-thirds gender threshold until sufficient numbers of women are elected through competitive elections.

Advantages

- Enables immediate compliance with the constitutional gender requirement.
- Can build on the model already used for county assembly gender top-up seats.

Limitations

- May increase the size and cost of Parliament.
- Does not directly address structural barriers that limit women's electoral success.



3.4.2. Option 2: Political Party Reform Model

Gender imbalance can also be addressed through reforms that strengthen internal party nomination and leadership processes.

Proposed legal mechanisms

- Require political parties to submit gender-balanced candidate lists.
- Mandate gender quotas within party leadership structures.
- Link compliance to political party registration and public funding.

Institutional roles

- The Independent Electoral and Boundaries Commission would enforce nomination rules during elections.
- The Office of the Registrar of Political Parties would oversee compliance with gender-responsive party governance standards.

Advantages

- Addresses the root causes of women's underrepresentation in politics.
- Avoids expanding the size of Parliament.

Limitations

- Enforcement may be politically sensitive.
- Political parties may resist mandatory nomination quotas.



3.4.3. Option 3: Electoral System Reform

Introducing elements of proportional representation or a mixed electoral system could increase opportunities for women's representation in Parliament.

Key proposals

- Amend Article 90 of the Constitution of Kenya (2010) to regulate party lists.
- Require alternating male–female candidate lists (“zebra lists”)
- Require political parties to submit lists that comply with gender parity before elections.

Advantages

- International experience shows proportional representation systems often improve women's representation.
- Encourages more diverse political representation.

Limitations

- Requires significant electoral reforms.
- May face political resistance due to changes in the electoral system.

3.4.4. Option 4: Strengthen Support Systems for Women Candidates

Targeted institutional support can help address the structural barriers that limit women's electoral participation.

Proposed measures

- Establish campaign financing support mechanisms for women candidates.
- Create mentorship and leadership development programs.
- Strengthen protection against political violence targeting women candidates.



Advantages

- Addresses financial and social barriers faced by women candidates.
- Supports sustainable leadership development.

Limitations

- Requires sustained funding and long-term institutional commitment.

3.4.5. Option 5: Introduce Dual-Gender Executive Tickets

Another approach is to require gender balance in executive electoral tickets.

Policy proposal

- Presidential candidates must select a running mate of the opposite gender.
- Governors must select a deputy governor of the opposite gender.

Advantages

- Guarantees gender balance in executive leadership positions.
- Increases visibility and normalization of women in national leadership.

Limitations

- Applies only to executive positions and may have limited impact on parliamentary representation.
- Requires constitutional or legislative amendments.



3.5. Policy Recommendations

While several policy pathways exist, a combined approach would be most effective in addressing both immediate compliance and long-term structural barriers to women's political participation. The following actions are recommended:

3.5.1 Enact Temporary Special Measures

Parliament should adopt legislation introducing temporary top-up seats for women to ensure compliance with the two-thirds gender rule while broader structural reforms are implemented.

3.5.2 Strengthen Political Party Accountability

The Office of the Registrar of Political Parties should enforce gender-balanced nomination practices and link compliance to access to public political party funding.

3.5.3 Establish Gender-Responsive Campaign Financing

Government should establish a Women's Political Participation Fund to support women candidates during electoral campaigns.

3.5.4 Protect Women in Politics

Parliament should enact legislation addressing violence against women in elections, with enforcement support from the Independent Electoral and Boundaries Commission and other relevant institutions.

3.5.5 Expand Leadership Development Programs

Civil society organizations should expand mentorship, training, and leadership development initiatives to strengthen the pipeline of women leaders.

3.5.6 Promote Civic Education and Norm Change

National and county governments should partner with civil society to conduct civic education campaigns that challenge patriarchal stereotypes and promote acceptance of women's leadership.



3.5.7 Strengthen Monitoring and Accountability

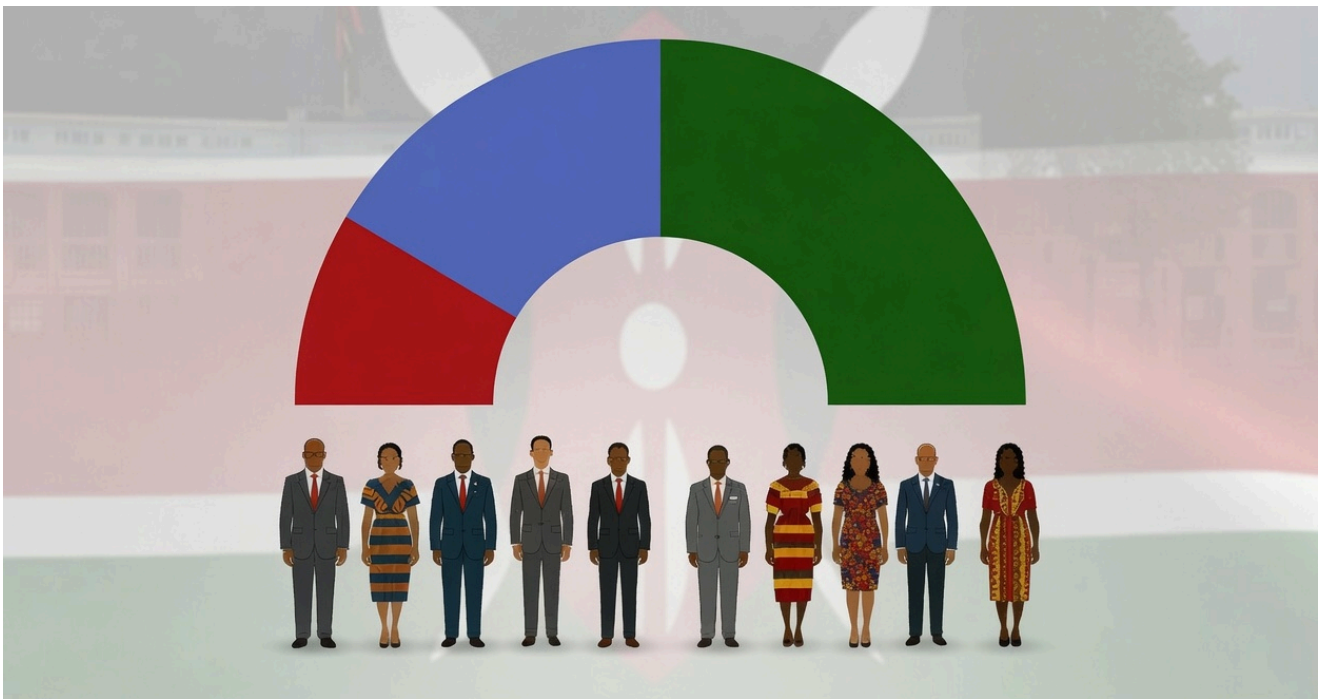
Institutions such as the National Gender and Equality Commission should publish annual reports tracking progress toward implementation of the gender principle.

3.6. Conclusion

The two-thirds gender principle remains one of the most transformative provisions of the Constitution of Kenya. However, its full realization in elective positions remains incomplete.

Although progress has been made through affirmative action measures and institutional initiatives, persistent structural, socio-cultural, and financial barriers continue to limit women's participation in electoral politics.

Achieving the constitutional gender threshold will require strong political will, targeted legislative reforms, strengthened institutional accountability, and sustained civic engagement. Implementing a combination of interim measures and long-term structural reforms will help ensure that Kenya's governance institutions reflect the diversity, equality, and inclusivity envisioned in the Constitution.





References

- Constitution of Kenya (2010)
- National Gender and Equality Commission (2023). Status of Equality and Inclusion in Kenya Report.
- Independent Electoral and Boundaries Commission. Electoral Data Reports.
- Kenya Women Parliamentarians Association Reports on Women's Political Participation.
- Convention on the Elimination of All Forms of Discrimination Against Women.
- Protocol to the African Charter on the Rights of Women in Africa.
- Beijing Platform for Action.
- Sustainable Development Goal 5.
- African Union Gender Policy.
- East African Community Gender Policy.



POLICY FOUR:

REFORMING THE RECALL OF MEMBERS OF PARLIAMENT IN KENYA

4.1. Executive Summary

The Constitution of Kenya provides citizens with the right to recall Members of Parliament (MPs) as a mechanism of democratic accountability. However, the statutory framework governing recall, primarily under the **Elections Act 2011** and related provisions in the **County Governments Act 2012**, has proven difficult to operationalize. High procedural thresholds, ambiguity in statutory language, and constitutional defects identified by courts have effectively placed the recall mechanism on pause.

In **Katiba Institute & another v Attorney General & another (2017)**, the High Court declared several recall provisions discriminatory and unconstitutional, particularly those restricting who may initiate recall and excluding certain categories of voters. These rulings exposed structural inconsistencies within the recall regime, including conflicting thresholds and unclear procedural rules.

This policy brief evaluates Kenya's recall framework in light of constitutional requirements and judicial interpretation, while assessing whether elements of Section 27 of the **County Governments Act**, which governs recall of Members of County Assemblies (MCAs), can be adapted into the **Elections Act 2011** to improve clarity and constitutional compliance.

The brief proposes three reform options:

- 1. Minimal reform:** correcting unconstitutional provisions and clarifying procedures.
- 2. Moderate reform:** adopting a “triggered recall” model similar to the United Kingdom.
- 3. Comprehensive reform:** establishing a coherent national recall integrity framework across national and county levels.



4.2. Introduction and Context

The right of citizens to recall elected representatives is embedded in the Constitution of Kenya 2010, reflecting the country's commitment to participatory democracy and public accountability. Recall mechanisms allow voters to remove elected officials before the end of their term where misconduct, breach of trust, or non-performance occurs.

Parliament operationalized this constitutional right through provisions in the Elections Act, which established rules governing:

- Grounds for recall
- Petition signature thresholds
- Verification processes
- Recall election procedures
- Validity thresholds

Additionally, the **County Governments Act** introduced similar recall provisions for Members of County Assemblies (MCAs), particularly under Section 27.

Despite this legislative framework, recall in Kenya has rarely been successfully executed. Legal challenges and constitutional litigation have exposed serious governance gaps, leading courts to question whether existing laws fully align with constitutional principles of equality, participation, and political rights.

4.3 Policy Problem

4.3.1 Ambiguity and Legislative Contradictions

Recall provisions in the Elections Act 2011 contain internal contradictions. For example, the law references both a simple majority decision rule and high validity thresholds, creating uncertainty about the standard required for a successful recall.

These ambiguities complicate implementation by the electoral management body, Independent Electoral and Boundaries Commission (IEBC).



4.3.2 Constitutional Defects

In *Katiba Institute & another v Attorney General & another* (2017), the High Court held that several provisions in the recall framework were unconstitutional because they:

- Restricted the categories of voters who could initiate recall petitions.
- Discriminated against certain voters (e.g., later-registered voters).
- Imposed restrictions not contemplated by the Constitution.

The court emphasized that while Parliament may legislate procedures for recall, it cannot limit constitutional political rights arbitrarily.

4.3.3. Procedural and Practical Barriers

Even where provisions remain valid, recall remains difficult due to:

- Extremely high signature thresholds..
- Complex verification processes.
- Strict timing windows.
- Expensive recall elections.

These barriers make recall practically inaccessible to citizens.

4.3.4. Governance Gap

The result is a “paper right” problem: The constitutional right to recall exists but is rarely usable in practice. This undermines public confidence in democratic accountability mechanisms.



4.4 Policy Options

4.4.1 Option 1: Minimal Reform – Constitutional Compliance and Operational Clarity

This approach focuses on correcting constitutional defects and clarifying existing procedures.

Key reforms

- Amend the Elections Act to remove discriminatory standing restrictions.
- Harmonize conflicting thresholds (majority vote vs validity threshold).
- Provide clear petition forms and timelines.
- Establish transparent verification standards by the Independent Electoral and Boundaries Commission.
- Introduce offences for intimidation or forgery during signature collection.

Strengths

- Directly addresses court rulings.
- Relatively easy to implement legislatively.
- Low institutional cost.

Risks

- Recall could still be used as a political weapon.
- Potentially high costs if recall elections become frequent.

4.4.2 Option 2: Triggered Recall Model (Moderate Reform)

This model draws inspiration from the Recall of MPs Act 2015 in the United Kingdom.



Key reforms

Recall petitions can only begin after defined misconduct triggers such as:

- Criminal conviction for specific offences
- Suspension from Parliament for ethical violations
- Findings of serious misconduct by oversight institutions

Once triggered:

- Voters sign a recall petition.
- If a threshold (e.g., 10–20%) is reached, a by-election is triggered.

Strengths

- Prevents constant politically motivated recall attempts.
- Aligns recall with verified misconduct.
- Protects stability of legislative institutions.

Risks

- If triggers are too narrow, recall may appear ineffective.
- Political actors could attempt to manipulate disciplinary mechanisms.





4.4.3 Option 3: Comprehensive Accountability Framework

This model builds a broader national recall architecture covering both national and county levels.

Key components

- Triggered recall for MPs.
- Harmonized recall procedures under the Elections Act and County Governments Act.
- Adoption of standardized verification procedures across institutions.
- Creation of a national recall integrity framework covering:
 - Petition audit trails
 - Cost control mechanisms
 - Public reporting on recall attempts.

Strengths

- Promotes coherence across levels of government.
- Reduces fraud and procedural abuse.
- Enhances democratic accountability.

Risks

- Complex to design and implement.
- May face political resistance.
- Could require constitutional interpretation or amendments.



4.5 Policy Recommendations

4.5.1 Adopt a Triggered Recall Model for MPs

Kenya should adopt a moderate reform approach modelled on the Recall of MPs Act 2015 in the United Kingdom, where recall petitions open only after defined misconduct findings. This balances accountability with political stability.

4.5.2 Align the Elections Act with Constitutional Principles

Amend the Elections Act to:

- Remove discriminatory restrictions identified in *Katiba Institute & another v Attorney General & another* (2017).
- Guarantee equal participation rights for all voters.
- Adoption of standardized verification procedures across institutions.

4.5.3 Adapt Section 27 of the County Governments Act

Parliament should adapt procedural clarity elements from Section 27 of the County Governments Act, including:

- Defined petition procedures
- Clear administrative timelines
- Transparent verification rules

These provisions can guide reforms in national recall legislation.



4.5.4 Establish Clear Safeguards

- Standing rules (who can initiate recall)
- Signature thresholds
- Petition verification
- Protection against coercion and fraud
- Transparent cost management.

4.5.5 Strengthen Institutional Oversight

The Independent Electoral and Boundaries Commission should receive statutory authority to develop detailed administrative regulations governing recall petitions.

4.6 Conclusion

Kenya's recall framework represents an important democratic safeguard but remains largely ineffective due to legislative ambiguity, procedural barriers, and constitutional defects. Judicial rulings, particularly *Katiba Institute & another v Attorney General & another* (2017), have highlighted the urgent need for reform.

Adapting procedural clarity from Section 27 of the County Governments Act (Kenya) and integrating a triggered recall model similar to the Recall of MPs in the UK would provide a balanced solution. Such reforms would preserve the constitutional right of recall while preventing its misuse as a routine political weapon.

A carefully designed recall system, clear, fair, and constitutionally compliant, would strengthen democratic accountability and restore public confidence in Kenya's electoral governance framework.



No.	Jurisdiction	Recall Model / Key Features	Key Lessons for Kenya
1	United Kingdom	Triggered recall under the Recall of MPs Act 2015. A recall petition can be opened after defined statutory triggers (e.g., criminal conviction or parliamentary suspension). A 10% signature threshold within the constituency triggers a by-election.	Combining statutory triggers with a petition threshold helps prevent frivolous recalls while maintaining democratic accountability.
2	Canada	Recall exists at the provincial level in some jurisdictions, notably British Columbia. Citizens can initiate recall through a petition requiring a high percentage of registered voters' signatures within a defined time period	High signature thresholds can limit abuse but may also make recall difficult to achieve.
3	France	Recall is not a central national accountability tool. Political accountability is mainly exercised through political parties, judicial oversight, and elections through political parties, judicial oversight, and elections.	Strong party systems and legal oversight can substitute for direct recall mechanisms.
4	South Africa	No voter-initiated recall of Members of Parliament. Accountability operates primarily through party-led removal mechanisms within proportional representation party lists.	Party-centered accountability reduces voter-driven recall but concentrates power within political parties.
5	Nigeria	The constitution allows recall of legislators through a voter petition followed by verification and referendum-style confirmation, though the process is complex and rarely used.	High procedural thresholds can limit misuse but often make recall practically difficult.



No.	Jurisdiction	Recall Model / Key Features	Key Lessons for Kenya
6	Ghana	Recall is not widely used as a national accountability mechanism; oversight is primarily exercised through elections, party systems, and parliamentary processes.	Alternative accountability mechanisms can reduce reliance on recall.
7	United States	Many states allow recall of elected officials, including governors and legislators. Procedures vary widely in signature thresholds, grounds, and timelines.	Flexible systems can empower voters but risk politicization and frequent recall attempts.
8	Brazil	Recall is not a primary accountability tool. Oversight is largely conducted through electoral competition, judicial institutions, and anti-corruption frameworks.	Institutional oversight mechanisms can provide accountability without recall processes.



International practice shows that recall systems work best when they clearly define triggers, signature thresholds, timelines, and verification procedures, while balancing citizen accountability with protection against political harassment of elected officials.

References

1. Constitution of Kenya (2010)
2. Elections Act (Kenya)
3. County Governments Act (Kenya), Section 27
4. Katiba Institute & another v Attorney General & another (2017)
5. Recall of MPs Act 2015 (United Kingdom)
6. Comparative recall systems in the United States, Canada (British Columbia), and Nigeria.
7. A credible recall system must address:



POLICY FIVE:

BOUNDARY DELIMITATION IN KENYA; A CONSTITUTIONAL CONUNDRUM.

5.1. What is boundary delimitation?

The term "*boundary delimitation*" usually refers to the process of drawing electoral district boundaries. However, it can also be used to denote the process of drawing voting areas (also called polling areas, districts or election precincts) for the purposes of assigning voters to polling places. The term has been employed to describe the process of demarcating administrative boundaries such as state/province, county or municipality lines as well[1]. Delimitation; the act of fixing, marking off, or describing the limits or boundary line of a territory or country [2].

5.2. What is boundary delimitation?

The boundary and delimitation process in Kenya was part of the electoral reforms that were proposed by the Kreigler report which set out to provide the principles to guide the process. Some of the principles indicated that the delimitation of Constituencies should be the equality of the vote and the maximum departure from that principle should be clearly defined in the law. Consideration of other criteria such as density of population, population trends, and means of communication, geographical features and community of interests should be retained but they should interfere minimally with the basic principle of equality of voting strength.

In March 2012, and pursuant to Article 89 of the Constitution, the IEBC conducted a national exercise of public consultations and subsequently published the National Assembly Constituencies and County Assembly Wards Order, 2012 through Legal Notice No. 14 of 2012. This Order contained the decision of the IEBC concerning the delimitation of constituencies and wards. 11. The election body estimated the required population per constituency in 2012 to be 133,138 using the 2009 census of 38,610,097 people in Kenya. Some Constituencies met the threshold while others fell below, resulting in what is known as protected constituencies. A political decision to protect them for the next 10 years was made. The fate of the 27 Constituencies that failed to meet the population quota threshold was left to the next boundaries review exercise that was to happen between 2020 and no later than 2024, a deadline that has been declared impossible to meet under the circumstances.



5.3. Policy and legal framework for Delimitation in Kenya

The delimitation of electoral units in Kenya is guided by Article 89 of the Constitution which provides in part as follows;

1. There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in Article 97 (1) (a).
2. The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.
3. The Commission shall review the number, names and boundaries of wards periodically.
4. If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.

5.4. Supreme Court Advisory Opinion

Faced with the dilemma on how to proceed with the constitutional imperative of conducting boundary delimitation, IEBC approached the Supreme Court seeking an advisory opinion on some of the issues surrounding the process including;

5.4.1 *Whether IEBC can undertake the process of delimitation of electoral boundaries and other electoral processes in the absence of Commissioners or the requisite quorum of Commissioners.*

In addressing this issue, the Court stated that the function of delimitation of electoral boundaries, as provided for under Article 88(4) (c), was a substantive constitutional responsibility that requires the deliberation and approval of the Commissioners of IEBC acting as a collective body and as such the Secretariat could not carry out this function without the commissioners being fully constituted.



5.4.2 Whether IEBC can conduct a review of the names and boundaries of constituencies and wards when the timelines envisaged under Articles 89(2) and 89(3) as read with Section 26 of the County Governments Act have lapsed and 89(3) as read with Section 26 of the County Governments Act can be extended, and if so, by whom and under what circumstances.

The Court addressed the issue of timelines by categorically stating that that timelines under Article 89(2) and (3) were binding and could not be disregarded. It acknowledged the fact that the lapse created a constitutional difficulty, but clarified that it lacked power to retrospectively extend or amend those timelines. The envisaged extension of timelines, the court held that only Parliament, through legislation or a Constitutional amendment, could establish mechanisms for extending timelines in exceptional circumstances such as vacancy of Commissioners.

While the Supreme Court's Advisory Opinion No. E004 of 2024 clarified some of the issues specifically the roles of IEBC's Secretariat and Commissioners, affirming that constitutional functions cannot be undertaken in the absence of Commissioners it failed to address the most pressing question—whether IEBC can conduct delimitation after lapse of timelines—unanswered, citing lack of a properly constituted applicant. As Kenya approaches the 2027 general elections, this unresolved question looms large. Without delimitation, the elections risk being conducted on outdated and unequal boundaries, threatening the very principle of electoral justice and someone could as well challenge the 2027 elections on this premise. Faced with this challenge and others IEBC has proposed to postpone the delimitation exercise and approach it through a phased approach which would entail;

1. Upscaling preparatory and technical activities, including geo- data collection and validation, capacity building, and acquisition of requisite tools;
2. Scaling down matters relating delimitation at least 12 months before the 2027 General Election to allow full institutional focus on election preparedness;
3. A directive that no Constituency or Ward boundaries will be reviewed before the 2027 General Election and a commitment to embark on boundary delimitation after the 2027 General Election[1].



Moreover, Section 26 of the County Governments Act, 2012 limits the number of wards to 1,450 contrary to the Constitution which confers upon the Commission the mandate to periodically review the number, names and boundaries of electoral units. The conflict between a statute law and the Constitution requires resolution by Parliament.

5.5. Policy Recommendations

- IEBC should file an Advisory Opinion seeking to clarify the issue of the dates which have been bypassed by events and the legality of the upcoming election since the Court could not conclusively address this issue in the earlier filed Advisory as IEBC was not properly constituted.
- Parliament should enact a Constitutional Amendment to Art. 89(2) giving IEBC an opportunity to conduct the exercise beyond the stated limits, as the SCORC indicated that the Constitutional timelines cannot be ignored.
- Parliament should amend Sec. 29 of the County Government Act to align it with the letter and spirit of Art. 89(3) which states that IEBC shall review the number, names and boundaries of wards periodically so the number of wards cannot be limited by statute while IEBC has exclusive powers of review.

5.6. Conclusion



References

1. Constitution of Kenya 2010
2. County Governments Act (Kenya), Section 29
3. Supreme Court's Advisory Opinion No. E004 of 2024
4. <https://www.iebc.or.ke/uploads/resources/jmFjJrsim3.pdf>
5. <https://aceproject.org/ace-en/topics/bd/introduction/bd10>
6. Source: Black's Law Dictionary 2nd Ed (1910).



Conclusion

This brief provides a comprehensive analysis of five critical pillars of electoral reform in Kenya, addressing the systemic implementation gaps between the 2010 Constitution and administrative reality. As the nation approaches the 2027 General Election, the brief identifies a window for institutional strengthening beyond reactive, elite-driven political bargains. A summary of proposals contained in the brief for the five critical pillars are as follows:

- 1. Campaign Financing** remains largely under-regulated; spending limits and regulations have been repeatedly suspended or annulled by Parliament and the courts. High costs exclude youth, women, and PWDs. The brief proposes that at the very least, Parliament must amend Section 29 of the Election Campaign Financing Act to align with court rulings, and the IEBC should form multi-stakeholder groups to track suspicious funds.
- 2. Political Party Inclusivity** is often symbolic rather than operational as many parties mention diversity, representation of marginalized groups in their founding documents as compliance mechanisms. The brief proposes to amend the Political Parties Act to introduce mandatory representation thresholds (quotas) and link public funding to inclusivity performance.
- 3. Two-Thirds Gender Principle** currently women hold only 24.8% of parliamentary seats, which is below the constitutional minimum. Barriers to achieving this inclusion agenda include high costs, patriarchal norms, and political violence. To counter these, the brief proposes enactment of temporary top-up seats in Parliament, similar to the county assembly model, and a consideration to establish a Women's Political Participation Fund.
- 4. Recall of MPs** is currently a paper right rendered unusable by high signature thresholds and unconstitutional statutory restrictions. The brief proposes an adoption of the "Triggered Recall Model" (used in UK) where petitions only open following specific findings of misconduct or criminal conviction.
- 5. Boundary Delimitation** in Kenya faces a constitutional conundrum as the 2024 deadline for boundary review has lapsed while the IEBC lacked commissioners to approve the process. The brief proposes enactment of a constitutional amendment to Article 89(2) to provide a one-time extension for the IEBC to conduct delimitation beyond the current limits.

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