



MZALENDO



Leaving others Behind?

Impact of
Negotiated
Democracy on
inclusive politics
in Kenya

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METHODOLOGY

Mixed Method Research:



Key Informant Interviews.



Focus Group Discussions.



Survey.

INTRODUCTION

PROBLEM

Underrepresentation of women and youth in elective politics

Non-adherence to constitutional principles of inclusion

PURPOSE

To assess how the triad of negotiated democracy, changes in political parties amendment act and lack of election campaign financing regulations limited participation of women and youth

OBJECTIVES

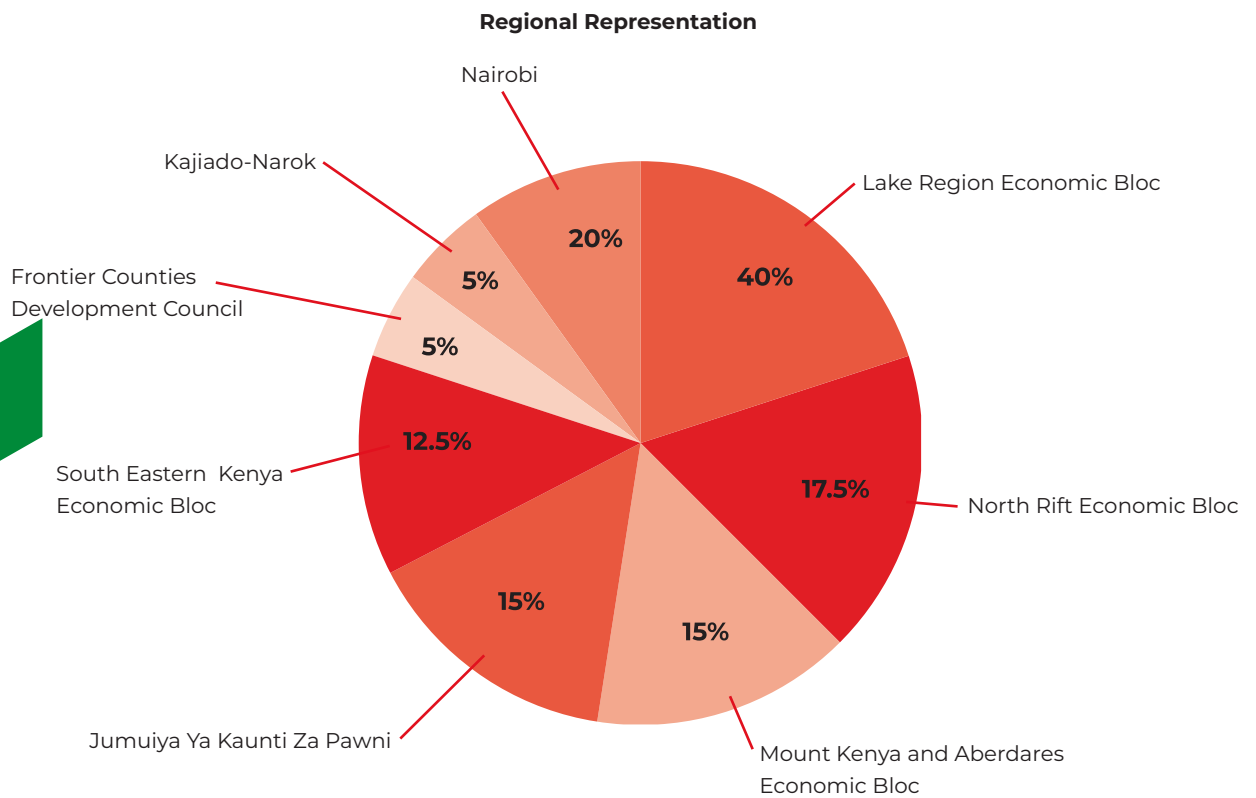
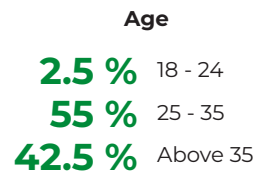
Assess the impact and identify challenges and opportunities of negotiated democracy, the political parties amendment act 2022, and the lack of an election campaign financing regulatory framework on political participation of women and youth in the 2022 general elections.

Document findings and recommendations that would inform mzalendo trust's sustained advocacy efforts on elections campaign financing regulatory framework and inclusive electoral legal reforms as a priority area for the 13th parliament.

TARGET

1. Political Parties' EMBs
2. Women & youth Aspirants and Candidates
3. Women & Youth Parliamentarians
4. State Actors involved in Elections
5. CSOs

DATA COLLECTION RESPONSE RATE



STUDY FINDINGS

Objective 1:

To assess the impact and identify challenges and opportunities of negotiated democracy, on political participation of women and youth in the 2022 general elections.

The Extent of use of Negotiated Democracy

Widespread regional use of Negotiated Democracy in the lead up to the elections

Pastoralist Communities and ASAL areas used Negotiated Democracy to identify those who would represent clans in the elections

Also widely applied within political parties through the indirect nomination method

Perceived Benefits of Negotiated Democracy

- Ideal for identifying suitable candidates
- Prevent sharp fallouts within political parties
- Prevent conflict
- Less expensive
- Less chaotic

Hidden cost of negotiated democracy

- Undertaken by select few individuals so open to abuse
- These select few do not include youth or women
- It has no clear operation framework (who, what, where, when, how) or inclusive parameters, so opaque.
- It does not contemplate redress or dispute-resolution mechanisms
- It seemed to promote zoning
- Manipulation, intimidation and exclusion of marginalised groups

“ the practice of agreeing on how to distribute political positions in advance of an election.”

-Dictionary of African Politics

Salient Dimensions of Negotiated Democracy

- Clan Elders select individuals to represent clans in elections
- Coalitions & Coalition Party
- Within political parties through the indirect nomination methods
- Consensus Building
- Opinion Polls
- Interviews

Respondents' definition of negotiated democracy

“ A sanitised system of impunity with no foundational ethos or democratic framework

-FGD Participant

“ A curtailing of people's rights

-KII Respondent

Hidden cost of negotiated democracy

- Does not accord with Constitutional Principles
 - Art 1 - Right to exercise sovereign power through democratically elected officials
 - Art 10 - Principles of inclusion, participation, transparency, accountability
 - Art 38 -Right to free, fair elections without unreasonable restrictions
 - Art 81-Universal suffrage based on the aspiration for fair representation and equality of the vote
 - Art 91 - Respect the right of all persons to participate in the electoral process



RECOMMENDATIONS

- Seek a judicial interpretation of the concept of negotiated democracy and its application in the Kenyan political context, given the apparent risk it poses to the inclusion of women and youth in political processes.

POLITICAL PARTIES AMENDMENT ACT

Objective 2:

To assess the impact and identify challenges and opportunities of the Political Parties Amendment Act 2022, on political participation of women and youth in the 2022 general elections.

OPPORTUNITIES OF THE POLITICAL AMENDMENT ACT



Provision of a clear framework on the distribution of the political parties' Fund based on the adherence to the two-thirds gender rule:

- 15% of fund to be shared proportionately based on No. of marginalised groups elected by a party
- No party qualifies for the fund in over two-thirds of officials are of same gender.



Increased the number of political parties benefiting from the political parties' fund including those that are led by women.

- minimum for a party to benefit from the fund is to have at least an elected representative
- ensure compliance with the two - thirds gender principle in its office bearers and representation of its governing body



Use of political parties Fund to promote the representation of the marginalised groups in parliament.

- The amendment provided a new provision (1A) under section 26 of PPA, 2011 to provide that that monies allocated to a coalition party shall be distributed in accordance with the coalition agreement, meaning that women and youth in coalescing parties would have a chance to benefit in their respective parties..



Less chaotic party nominations.

- Respondents felt that nominations in 2022 were less chaotic.
- Parties, especially those in coalitions, could negotiate and build consensus on which party in the coalition would field candidates in certain counties for which elective position, reducing acrimony and chaos that could have been witnessed that would hinder the participation of women and youth.



Contributed to 'sanitization' of party nomination processes:

- A number of provisions made were progressive such as.
 - use certified register of members during nominations
 - parties' establish structures (Section 38B) such as dispute resolution mechanisms
 - designating a person to issue nomination certificates
 - Notification of party nominations not less than 10 days to the day of nominations

Establishment of Party Website

- The website's purpose is:
 - To use disseminate parties' information including Constitution, nomination rules, party lists etc
 - To promote transparency and accountability in elections
 - Also provides women and youth access to information that can help in deciding which party to join.



Explicit statement of the roles and functions of political parties roles and functions of a political party:

- A new section that stipulates the roles and responsibilities of a political party, e.g.,
 - Recruiting and enlisting members,
 - Nomination of candidates for elections,
 - Promoting representation in Parliament and County Assemblies of Persons with Disabilities, youth, women, ethnic and other minority groups and marginalised communities and mobilising citizens into participating in political decisions and shaping and influencing public policy.



Use of technology in the management of political parties

- The Act provides for the establishment of the political parties' Information Management System (IMS) to facilitate the processing of political parties' data and records.
 - The system should be simple, accurate, verifiable, secure, and accountable.

CHALLENGES OF THE POLITICAL AMENDMENT ACT

- Introduction of unconstitutional provision of indirect nominations
- Introduced conflict in the application of PPA and Elections Act, 2011 leading to duplication of roles of ORPP and IEBC with regard to timelines and management of party membership list and nominations rules.
- Introduced clash of timelines on when political parties should clear with the ORPP timelines and IEBC timelines.
- Legalised an electoral offence of being in more than one party:
- Low awareness of the provisions of the political parties Amendment Act, 2022 amongst women and youth aspirants of the 2022 general elections.



The amendments brought more confusion as they created the overlap of duties between ORPP and IEBC with regard to the requirement of party nomination rules and party membership list. Parties used this loophole to manipulate their party processes and more often what was deposited to the registrar is not what was presented to the IEBC'

-KII respondent

RECOMMENDATIONS



- The ORPP to enforce the implementation of section 26 (1)(a) of the Political Parties Act 2011, that requires at least 30% of monies received by parties be used to promote the representation of women and youth in parliament.
- The ORPP to ensure that coalitions are structured within the confines of the law and that they adhere to their own coalition agreements.
- ORPP collaborate with CSOs and other stakeholder to undertake political education on the Political Parties Amendment Act, 2022 targeting youth, women, PWDs and CSOs.
- Parliament to initiate the process of amending Elections Act, 2011 to align it with the new Political Parties Amendments of 2022.
- Amendment of section 28 of the Elections Act, 2011 to provide that a party participating in an election shall at least 14 days before submitting the party membership list to the commission, submit the membership list to the registrar of political parties for certification.
- Amendment of section 35 of the Elections Act 2011 to provide that a party intending to submit a party list to the Commission shall at least within 14 days before the submission of the list to the commission submit it to the Registrar of Political Parties for certification.
- Amendment of section 35 of the Elections Act 2011 to provide that a party intending to submit a party list to the Commission shall at least within 14 days before the submission of the list to the commission submit it to the Registrar of Political Parties for certification.
- IEBC makes proposal to Parliament on the amendments of the Elections Act 2011, to align some of the provisions of the Political Parties Amendment Act 2022.

ELECTION CAMPAIGN FINANCING

Objective 3:

To assess the impact and identify challenges and opportunities of the lack of an election campaign financing regulatory framework on political participation of women and youth in the 2022 general elections.

“It is a terrible law and a futile ambition”

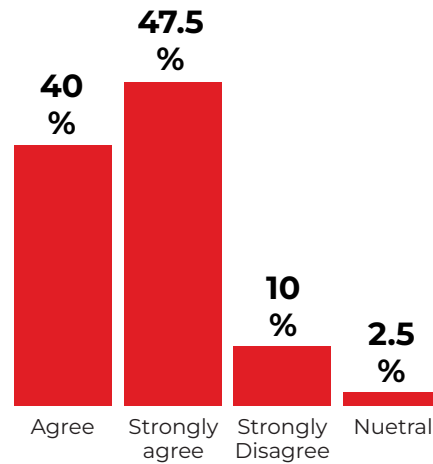
-KII respondents

“Why do you want him to account for the money he used in the campaigns, what is your business where he got the money”

-KII respondents

“Money is freedom, and you can't curtail freedom”

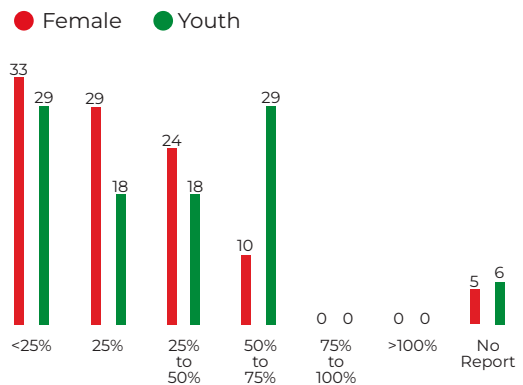
-KII Respondent



Received any kind of support from their political party



To what extent were you able to realise your campaign financing targets?



None of the respondents were able to fully finance their campaigns

Election Campaign Spending



Youth



Women

Vying for MP	KSH <5-5M	KSH 5-10M
Vying for MCA	KSH <5-5M	KSH <5-5M

Challenges of the Elections Campaign Environment



The big problem of our democracy and the risk to this democracy is the quality of citizenship we have. If the ground [sic] required different, it would dilute and erode the power of money with the one election.

-KII respondents



Once you go to church, kidogo, kidogo harambee inatokea from nowhere...Unatoa pesa kuonyesha seriousness yako ya kutaka kiti!

-Female Candidate

RECOMMENDATIONS:

- IEBC to push for its complete independence in order to enhance its capacity technically, financially and in its human resource to address election campaign financing and other electoral demands.
- CSOs to undertake a multi-stakeholder, multi-pronged advocacy campaign that seeks reforms to the entire elections legal framework. This would include engagement with Parliament to amend laws, seeking judicial opinions on grey areas of the constitutions, overlapping mandates and any other electoral issues identified.
- The IEBC to provide reasonable limits to election campaign spending that are scientifically arrived at and have had the public's input.
- The IEBC to provide reasonable limits to election campaign spending that are scientifically arrived at and have had the public's input.
- Initiate public participation on the elections campaign financing regulations and campaign expenditure limits with the aim of operationalizing the Elections Campaign Financing Act, 2013
- The IEBC, in concert with other law enforcement bodies such as the Office of the Director of Public Prosecutions (ODPP), proactively take action to enforce the Electoral Code of Conduct. This includes the identification, arrest, and prosecution of voter bribery offences in order to deter the practice.

ZONING

Objective 4:

To assess the impact of zoning on political participation of women and youth in the 2022 General Elections.

Respondents' understanding of zoning:

“ A political agreement that is unconstitutionally adopted by political candidates to have candidates where parties are deemed to have strong support and lock out other interested parties to field candidates in those areas

“ Process whereby parties agree based on tribal considerations to field candidates in some areas and reduce competition to increase their chances of capturing power and their numbers in parliament.

“ An illegal political tool that is used to stop other political entities into other regions.

“ In regions that were not our strongholds, we did not give much support to candidates, we had to focus on our stronghold areas

“ From a candidate's point of view, they don't like zoning but from a party's perspective it has to look at its strength in the region.

“ We were affected when we joined Kenya Kwanza, we lost so many candidates, like Luo Nyanza. Anyone affiliated with KK, was beaten or threatened.

“ It affected so many women. Most of them ended up being independent, and those who couldn't go as independent gave up

IEBC to enforce the second schedule of the elections Act, 2011 on elections code of conduct for Political parties. The schedule provide among other things that political parties should affirm the rights of all participants in an election to canvass freely for membership and support from voters

SUMMARY OF RECOMMENDATIONS

IEBC:

- The IEBC needs to provide reasonable limits to election campaign spending that are scientifically arrived at and have had the public's input.
- The IEBC, in concert with other law enforcement bodies such as the Office of the Director of Public Prosecutions (ODPP), proactively take action to enforce the Electoral Code of Conduct. This includes the identification, arrest, and prosecution of voter bribery offences in order to deter the practice.
- IEBC to push for its complete independence in order to enhance its capacity technically, financially and in its human resource to address election campaign financing and other electoral demands.
- Initiate public participation on the elections campaign financing regulations and campaign expenditure limits with aim of operationalizing the Elections Campaign Financing Act, 2011.
- IEBC makes proposal to Parliament on the amendments of the Elections Act 2011, to align some of the provisions of the Political Parties Amendment Act 2022.

ORPP:

- The ORPP should enforce the implementation of section 26 (1)(a) that require at least 30% of monies received by parties be used to promote the representation of women and youth in parliament.
- ORPP collaborates with CSOs and other stakeholder to undertake political education on the Political Parties Amendment Act, 2022 targeting youth, women, PWDs and CSOs.

POLITICAL PARTIES:

- Ensure compliant to the two thirds gender rule during party nomination process and compilation of party list.

- Ensure women and youth are occupy key decision-making positions in party and coalition structures.

PARLIAMENT:

- Parliament to initiate the process of amending Elections Act 2011 to align it with the new Political Parties Amendments of 2022.
- Develop a law on two thirds as contemplated in the Constitution as well as a law to operationalize article 100 the Political Parties Amendment Act 2022.

CSOs

- Seek a judicial interpretation of the concept of negotiated democracy and its application in the Kenyan political context, given the apparent risk it poses to the inclusion of women and youth in political processes.
- Undertake a study on the use of negotiated democracy and its compatibility with Kenya's majoritarian - First-Past-The-Post electoral system.
- Support women and youth to organise themselves better and demand for their political rights
- Support in capacity building of women and youth to strengthen their negotiation, leadership and campaign management skills
- Undertake a multi-stakeholder, multi-pronged advocacy campaign that seeks reforms to the entire election legal framework. This would include engagement with Parliament to amend laws, seeking judicial opinions on grey areas of the constitutions, overlapping mandates and any other electoral issues identified.
- Civil society organisations that support women and youth inclusion to undertake an exploratory study on the application of proportional representation electoral system to all other electoral positions not just for elections contemplated in 177 of the constitution.