



# Devolution and the promise of democracy and gender inclusion in Kenya: An evaluation of the first decade of county governments

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## Introduction

The clamour for decentralisation and inclusion won a major battlefront when the Constitution of Kenya, 2010 (2010 Constitution), which entrenched devolution as one of its 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, ideals which are critical for women rights. But has devolution delivered on these fronts? This Policy Brief explores this question after a decade of its career. It evaluates the objectives of devolution both to democratise governance and to include. More specifically,

the Policy Brief reviews the extent to which the first decade of devolution, 2013-2022, realised democratic inclusion for women.<sup>2</sup> It does so by responding to three main questions, whether: i) the institutions of county governance incorporated women; ii) the counties enacted laws and policies that are responsive to the rights and welfare of women; and iii) the counties initiated projects that resonate with the needs of women.

The empirical study finds that devolution institutions included women, although the levels of their participation were not always on point. By the close of the first decade of devolution, the representation of women in county assemblies through the ballot was still wanting. Women's performance in the MCA electoral contests was yet to march the performance of the youth for the same positions and that of women in parliamentary contests. To meet the 2/3-gender

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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.

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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.

rule, a top-up formula was applied successfully, although it had its downfalls. For instance, nominated female MCAs were thought to be of a lower cadre and on this basis would be denied opportunities to head county assembly committees. Since the nominated MCAs do not represent any constituency or run any fund or kitty, their visibility appears to have been diminished to the extent of being unable to convert their advantage to success in subsequent electoral contests. 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 county executive committees although many counties failed to meet the constitutional 2/3-gender rule in the executive appointments. On the positive note, women county executive committee members were appointed to both important and inferior county executive committee offices contrary to the usual thought that they are only considered for inferior departments like social services. The research also finds lots of evidence to support the conclusion that county laws and programmes responded to the needs of women noticeably.

The research leading to this Policy Brief deployed a number of research methodologies. First, we reviewed literature on the subjects of devolution and inclusion in Kenya. Second, we selected five county government case studies – Garissa, Kakamega, Mombasa, Nakuru and Narok – to enable an in-depth analysis of the specific counties, and to provide diverse 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>, and Christian<sup>8</sup> and Islamic<sup>9</sup> religious backgrounds. Third, using very loose questionnaires, we interviewed knowledgeable persons in the study counties in the 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 various 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 research questions.

### **Whether the institutions of county government incorporated women**

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 CECs), and leadership positions in the county assemblies. However, the first decade of devolution, 2013-2022, presented a very different reality. Women’s political participation at the devolved governance level in the first decade of devolution was dismal, considering the constitutional 2/3-gender rule, the overall performance of women in elective positions at the national level, and the success of the youth in electoral politics at the county assembly level.

As part of its equality provisions, the 2010 Constitution articulates the principle that

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3 Mombasa and Nakuru.

4 Garissa, Kakamega and Narok.

5 Garissa and Narok.

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6 Kakamega, Mombasa and Nakuru.

7 Narok.

8 Kakamega and Nakuru.

9 Garissa and Mombasa.

'not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.'<sup>10</sup> However, in the first decade of devolution, the composition of the various institutions of county governance did not always meet this requirement.

As a result of the Independent Electoral and Boundaries Commission (IEBC) failing to disaggregate electoral results statistics on the basis of gender 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>. 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%.

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

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>16</sup>

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10 Article 27(8), 2010 Constitution.

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 C 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,' *The 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' *The 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', *The Daily Nation*, 23 August 2017.

14 Machel Waikenda, 'Let us soberly seek a solution to the two-thirds dilemma', *The Star*, 23 May 2015.

15 FIDA Kenya and NDI, 'Key gains and challenges: A gender audit of Kenya's 2013 election process' (2013), 50.

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

Despite the marginal improvement above, women's performance at ballot for the MCA positions was below the overall national average for women's leadership in both cycles. 145 women (7.7%) were elected by ballot to the various State offices in 2013 out of the 1882 total elective positions, which increased to 172 (9.2%) in 2017.<sup>17</sup>

Comparatively, the youth performed better than women at the MCA level. In 2017, 287 youth were elected to county assemblies (19.8%), a stellar performance when compared to 98 women (6.8%).

Still, the above rate of improvement for women in 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 governor. 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>18</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>19</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>20</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.

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>21</sup> especially when compared to the National Assembly constituencies where women won 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>22</sup> 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 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.

On one hand, the number of female governors went up from zero in 2013 to three in 2017; on the other hand, 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,

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17 The total number of elective seats, if the positions of Deputy President and deputy governor are included, is 1930.

18 See Figure 5.

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

20 IEBC 'Data report of 2017 elections', April 2022, 12.

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21 <sup>23</sup> NDI and FIDA, 'A gender analysis of the 2017 Kenya general elections', 27.

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



including one woman, exited office either through death or impeachment.<sup>23</sup>

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. 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>24</sup> 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. Therefore, 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 women deputy governors remained incapable of converting their positions to victory in subsequent gubernatorial elections throughout 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>25</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 for the National Assembly were yet to show marked improvement from the pre-2010 performance. Despite the establishment of opportunities for

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23 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', *All Africa*, 19 January 2021.

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

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

the 47 women representatives, women only accounted for 20.77% of elected representatives in the National Assembly in 2017.<sup>26</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>27</sup> in 2007, the figure stood at 7.27%.<sup>28</sup> Nevertheless, if the upward variances in representation through election are anything to go by, with sustained inclusion efforts, there will be an increase in women's representation in elective positions.

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>29</sup>

After the 2017 General Elections, only 98 women were elected to the county assemblies countrywide through ballot causing 650 women to be nominated. Consequently, nominated MCAs accounted for 87% of all female MCAs

countrywide.<sup>30</sup> 670 female MCAs had been elected through nomination following the 2013 General Elections.<sup>31</sup> Since not a single woman was elected by ballot to 12 county assemblies in 2017, including Garissa and Narok,<sup>32</sup> all the female MCAs in those county assemblies were elected through nomination. 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. 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.

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>33</sup> The National Democratic Institute and the Federation of Women Lawyers listed 14 county assemblies<sup>34</sup> that did not comply with the gender top-up formula in 2013 fully, which anomaly reduced markedly to three

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

27 This percentage excludes the women representative seats.

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

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

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30 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.

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

32 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, 'A gender analysis of the 2017 Kenya general elections', 31.

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

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

in 2017.<sup>35</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).

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>36</sup> and may entrench the narrative that nominated women are not 'real' members or are mere 'bonga points'<sup>37</sup> or 'flower girls' as is usually said in ordinary political parlance.<sup>38</sup> Thus, despite enabling the 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>39</sup> and in Senate (28%)<sup>40</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.

A negative and positive conclusion can be entered regarding women's participation in the county executives. 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 county executive institutions wobbled dangerously at the margins of the constitutional threshold – invariably. On the positive note, women were appointed to both 'important' and 'inferior' county 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>41</sup> Of those counties that satisfied the 2/3-gender rule, women comprised the bare constitutional minimum.<sup>42</sup> However, Kiambu County had the highest representation of women in the County Executive in 2013 at an impressive 86%.<sup>43</sup>

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

36 Cottrell-Ghai, 'Women's gains under the New Constitution', 265.

37 Cottrell-Ghai, 'Women's gains under the New Constitution', 265. 'Bonga points' are bonus points granted to customers for mobile phone use by Safaricom, a Kenyan telecoms provider.

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

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

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

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

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

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

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>44</sup> 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.

According to feminist studies, women tend to be assigned inferior or powerless portfolios, which are often dichotomised along the gender roles.<sup>45</sup> Yet, 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.

That Kakamega County assigned women the Agriculture, Health, and Science and Technology dockets 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>46</sup> entrusted women to head the agriculture docket is a major achievement for the gender inclusivity discourse. 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

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

45 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.

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46 Narok County Integrated Development Plan (2018-2022), 19; PM Mwanyumba and others, 'Livestock herd structures and dynamics in Garissa County, 5(26) *Kenya Pastoralism* (2015); See also <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 and others, 'Pastoral resilience among the Maasai pastoralists of Laikipia County, Kenya', 7(2) *Land*, 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.



assigned more 'important' portfolios like Finance and Economic Planning, and Health, although the Health docket could also be seen as a typical feminine role of caregivers despite being a key devolution mandate. 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. 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.

It is possible to criticise the respective governors for appointing fewer women to the CECs than constitutionally required; however, these appointing authorities cannot be accused of assigning women only the lesser important ministries or departments.

The first decade of devolution saw women take up influential leadership roles in county legislative institutions 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. With the exception 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>47</sup>. Therefore, although women are getting into the county legislative institutions increasingly, their influence at the top levels is only beginning to be felt.

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 initially chaired four committees post-2017, 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. 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>48</sup> It is noteworthy that women MCAs in Nakuru held the positions of Deputy Leader

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47 NDI and FIDA, 'A gender analysis of the 2017 Kenya general elections', (2018) 33.

48 It is noteworthy that 4 women also served as vice-chairs of committees including ICT, Justice and Legal Affairs, Finance and Planning, and Trade, Tourism and Cooperatives.

of Majority, Minority Whip and Deputy Minority Whip.<sup>49</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.

The case of *National Gender and Equality Commission v Majority Leader, County Assembly of Nakuru & 4 others*<sup>50</sup> illustrates that there could be an understanding among some county assemblies that committee leadership is a preserve of elected representatives, which could have reduced the percentage of women in committee leadership significantly as most women were in the county assemblies on the basis of the nomination process. Although the High Court ruled in favour of nominated MCAs, the 'elected by ballot only' policy appears to be entrenched in some county assemblies with serious impact on the leadership of legislative committees by women. While the Nakuru County issue can certainly not be generalised for all county assemblies, the hint should not be lost that nominated MCAs may be missing out of committee leadership because of a silent and illegal policy.

### **Whether counties enacted laws and policies that are responsive to the rights and welfare of women**

It is clear that women were part of the devolution decade as elected and nominated MCAs - and as speakers, deputy speakers and committee chairs, 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 women? Our survey of the case studies showed that there were benefits beyond mere inclusion, since laws favourable to women were enacted and many appropriate projects launched.

While the approaches differed from county to county, our case studies demonstrate that county legislation favourable to women tended to focus on the following main objectives: accommodating women in the leadership of the various institutions that the laws established including through special quotas; establishing special funds to support their economic welfare; incorporating affirmative action measures in county procurement procedures; and enhancing maternal and antenatal healthcare.

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 women in institutions of governance, the emerging consensus is to secure their inclusion through special seats. To the common problem of the economic subordination of women, the general solution appears to be measures such as funds to support women 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. Coming from the grassroots, such policies may continue to recommend themselves at the national level perhaps even more strongly.

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

50 *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 (2019) eKLR.

## Whether counties initiated projects that resonate with the needs of women

County programmes aimed at improving the situation of women tended to fall into three broad categories: business and investment, public works, and health and general welfare. Under business and investment, the idea was to empower unemployed women mainly through establishing special funds, imparting their 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>51</sup> and used this framework to train 6000 women and youth on sustainable income generation.<sup>52</sup> At one point, 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 countywide in 2020-2021.<sup>53</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. Similarly, Nakuru County established agricultural entrepreneurial projects that included supply of piglets, chicks and potato seeds for women and youth programmes. Our study also shows that Narok County operationalised the Access to Government Procurement Opportunities programme to facilitate women, among other groups, to access County Government contracts, and started entrepreneurship programmes to

impart business skills to members of certain marginalised groups running small and medium-sized enterprises including specifically women.<sup>54</sup>

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 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>55</sup> Such approaches were tested at the national level previously through programmes like Kazi kwa Vijana with notable success.<sup>56</sup>

The study county governments also gave the health mandate noticeable attention, and introduced special programmes for the benefit of women. 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>57</sup> and communicable diseases like HIV/AIDS; health facilities for addressing gender-based violence (GBV) including gender desks<sup>58</sup> and rescue

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51 Through the Garissa County Revolving Fund Act, 2018.

52 Garissa County Bills and Acts, *Revolving Fund Act Garissa County 2018* -<<https://garissa.go.ke/download/revolving-fund-act-garissa-county-2018/>> on 10 June 2022.

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

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

55 See, *Kakamega County annual development plan (CADP) for 2022/2023*, 21.

56 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.

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

58 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.

centres<sup>59</sup>; health facilities for antenatal and postnatal healthcare;<sup>60</sup> HIV/AIDS prevention and treatment measures, which extended to testing, prevention of mother-to-child transmission, and dispensation of medication;<sup>61</sup> reproductive health interventions like cervical cancer screening;<sup>62</sup> and medical insurance covers.<sup>63</sup>

Of all the programmes in study counties, Kakamega County's Afya ya Mama na Mtoto Care Program (Oparanyacare) was perhaps the most innovative. Started in 2013, and supported

by United Nations Children's Fund,<sup>64</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 postnatal care services. Thus, the Oparanyacare package incorporated antenatal care, skilled delivery, postnatal 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 antenatal and postnatal 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 study counties on their delivery on the health mandate, the conclusion that formidable and sometimes innovative interventions were made for the women (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 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, 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 women; ii) the counties enacted laws and policies that are

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59 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.

60 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.

61 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.

62 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.

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

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



responsive to the rights and women; and iii) the counties initiated projects that resonate with the needs of women.

Women were 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 gubernatorial contests.

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 countrywide. 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 the 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.

Many county laws were enacted to cater for the rights and welfare of women. Such legislations touched on affirmative action measures meant to enable women to be included in the various institutions established at the county level; special funds meant to uplift the economic wellbeing of women; affirmative action measures in county procurement procedures; and maternal and antenatal healthcare.

County programmes related to women tended to provide business and investment opportunities, offer education and vocational training, involve them in public works, and cater for their health and general welfare, among others.

## Recommendations

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 women from their constitutionally-guaranteed positions.

That said, 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 can be both useful and negligent, we urge the courts to continue with some of the innovative interventions discussed in this study as they review other negative jurisprudence that could have affected the participation of women negatively.

Cultural or religious dialogues are needed in areas where the gender agenda has aborted for those reasons.

Finally, the innovations in law and programmes, which have emerged at the county level should be improved upon, shared across board, and where possible adopted at the national level as well.

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 women's political participation. Vigilance during transitions caused by death, impeachment or resignations is also critical in ensuring that the hard-won gains are not lost during such moments.

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; and part of the fuel for this engine will be diligence on the part of the wielders of power and vigilance on the part of the citizenry.

## Ideas for future research

In addition to keeping an eye on the inclusion of women in county government institutions, future researchers may want to trace the levels of women's contribution once in those spaces. Future research may also consider exploring ways to exploit opportunities in certain cultural systems to favour of women's political inclusion.

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