



**Elections
Observation
Group**

CREDIBLE, PEACEFUL, FREE AND FAIR ELECTIONS



FROM RHETORIC TO ACTION

A Mid-Cycle Review
of the Status of Electoral
Reforms in Kenya

TABLE OF CONTENTS

Table of contents	3
Abbreviations and acronyms	4
Acknowledgment	5
Executive summary	6
Introduction	8
Background	9
Chapter one	10
Electoral legal framework and jurisprudence	10
A. The international legal framework governing elections	10
B. Regional legal framework governing elections	12
C. National legislation on elections	13
Chapter two	17
Electoral legal reforms post-2017 elections and the status on implementation	17
Recommendations	40
A. Critical minimum legal reforms areas based on the elog-twg thematic areas	40
B. Key interventions and strategies to be adopted for the realisation of the recommendations to the electoral reforms	40
Bibliography	41
List of statutes	41
National legislations	41
International instruments	41
Regional instruments	41
List of cases	41
Appendices	42
Appendix 1 meeting with the independent electoral and boundaries commission (iebc)	42
Appendix 2 meeting with the political parties dispute tribunal (ppdt) and the office of the registrar of political parties (orpp)	42
Appendix 3: elog webinar meeting with the duty bearers'	42

ABBREVIATIONS AND ACRONYMS

BBI	Building Bridges Initiative
BPFA	Beijing Declaration and Platform for Action
BVR	Biometric Voter Registration
CAJ	Commission on Administrative Justice
DRG	Dialogue Reference Group
ELOG	Election Observation Group
ELOG-TWG	Election Observation Group - Technical Working Group
EU EOM	European Union Election Observation Mission
EVI	Electronic Voter Identification
GDPR	General Data Protection Regulations
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
IEBC	Independent Electoral Boundaries Commission
ICT	Information and Communications Technology
IPOA	Independent Policing Oversight Authority
KNCHR	Kenya National Commission on Human Rights
NDC	National Dialogue Conference
NCKK	National Council of Churches of Kenya
NECEC	National Ethics and Civic Education Commission
NIIMS	National Integrated Identity Management System
ODPP	Office of the Director of Public Prosecution
ORPP	Office of the Registrar of Political Parties
PPDT	Political Parties Disputes Tribunal
PWDs	Persons with Disability
RTR	Results Transmission System
TWG	Technical Working Group
UDHR	Universal Declaration on Human Rights
UN Convention	United Nations Convention

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Regina Opondo
Chairperson
ELOG Steering Committee

EXECUTIVE SUMMARY

After its observation mission for the 2017 electoral process, ELOG produced its final report namely, *One Country, Two Elections, Many Voices!* which detailed its findings and recommendations on the conduct of the electoral processes. Further, ELOG in partnership with the CSO's Technical Working Group (TWG) on elections, held a CSO symposium on 22nd and 23rd March, 2018 and consolidated the major domestic election observation and monitoring reports from the 2017

the 2010 Constitution. Numerous progressive, extensive and significant reforms were incorporated, which were aimed at mitigating future electoral conflicts. The Constitution saw the introduction of Chapter Seven, on the representation of the people that outlined the General Principles for the electoral system. Chapter Seven acknowledges that every citizen has the right to free, fair and regular elections based on universal suffrage.

After each electoral cycle, Kenya has witnessed the agitation for reforms on both the legal and institutional framework.



electoral process into a report entitled *Points Taken*. The report summarised a matrix of recommendations on critical thematic areas relating to the electoral processes.

Recognising that timely electoral reforms are key in the realisation of credible, peaceful, free and fair elections in any democratic society, ELOG set out to review, consolidate and assess the uptake and enactment of electoral reforms in the country post-2017 elections. This report documents the status of the suggested electoral reforms in the country.

In the course of the development of this report, ELOG noted that the country is still far from enacting the necessary reforms as key legal, institutional and policy reforms are yet to be undertaken. Further, the situation has been made worse by the Novel Corona Virus Disease (COVID-19), which affected the operations of key duty bearers like IEBC, ORPP and Parliament. The report has made the following observations:

The election cycle in Kenya has been marred with allegations of rigging. Following the election violence witnessed during the 2007-08 election, the country embarked on an intense Constitutional review process that led to the promulgation of

Noteworthy is the evolution of the Kenyan jurisprudence. The Supreme Court of Kenya in its historic pronouncement, nullified the 2017 presidential elections while the High Court declared several sections of the Elections Laws (Amendment) Act 2017 as passed by Parliament unconstitutional. These decisions have been key in providing the structure of the electoral process, enhancing the independence of the Kenyan courts and subsequently, initiating legal reforms that have strengthened Kenya's democracy.

The civil society in Kenya has over time, played a critical role by demanding for urgent and comprehensive electoral reforms. Initiatives such as the National Dialogue Conference 2018, the Building Bridges Initiative 2019 and other reports from stakeholders for example, ELOG, NCCK, Dialogue Reference Group (DRG), UDPK, CDRA among others, have put forward progressive proposals towards electoral reform.

Election administration and management has always been a topic of discourse after every electoral cycle with proposals to audit the IEBC, stagger elections and to develop model rules for internal dispute resolution mechanisms. Regrettably, these recommendations continue to remain at the proposal

stage. There have been recommendations to amend the IEBC Act, 2011 to ensure a new Commission is established at least two years before an election. The IEBC (Amendment) Bill, 2019 proposes mechanisms to appoint commissioners. The Lifestyle Audit Bill, 2019 seeks to curb corruption among public officers in the Judiciary and other commissions mandated to oversee the electoral process.

On voter registration, there have been proposals to integrate civil and voter registration processes to realise a 100% national voter registration rate. In streamlining political party processes, there have been proposals to clarify the electoral complaints dispute resolution processes and to resolve jurisdictional issues between the IEBC and the Political Parties Disputes Tribunal (PPDT).

The need to embrace the participation of persons with disabilities cannot be overemphasised. Several bills currently in Parliament seek to bring an overhaul in the representation of persons with disabilities; the Representation of Special Interest Groups Laws (Amendment) Bill, 2019; The Persons with Disabilities (Amendment) Bill, 2019 and The Constitutional Amendment Bills. These Bills seek to give effect to Article 100 of the Constitution of Kenya, 2010 on the promotion of representation of marginalised groups, particularly persons with disabilities. Unfortunately, some

critical recommendations made, like the enactment of an electoral college system for persons with disabilities, have also remained at the proposal stage.

The participation of women in the electoral process is critical for any mature democracy. The Constitution has provided for the two-thirds gender rule in elective positions. The clamor for the realisation of the gender rule continues, with proposals being made for Parliament to work towards a practical formula to implement the rule. Several strides have been made with the Duale and Shollei Constitutional Amendments Bills currently in Parliament. Regrettably, the proposal to implement stiff penalties for any defaulters of regulations made for purposes of gender inclusivity remains at the proposal stage. The Public Participation No. 2 Bill, 2019 seeks to; establish a legal framework, define the parameters for public participation and define the obligations of state organs and public offices in conducting public participation. With proper implementation, the Bill obligates the IEBC to conduct voter education.

In order to ensure that the critical recommendations made by different stakeholders are taken up, there is a need to lobby and advocate for comprehensive electoral legal reforms by all stakeholders including key organisations and dialogue initiatives.



INTRODUCTION

Elections have been carried out in history from as early as ancient Greece, ancient Rome and throughout the medieval period to select rulers and representatives who were entrusted to create laws and governance structure in society.

To elect means ***“to select or make a decision.”*** In modern society, elections have been described and interpreted in different ways. The most applicable is ***“a formal group decision-making process by which a population chooses an individual to hold public office”*** in a democratic nation. An election, therefore, remains a mechanism by which modern representative democracy has operated.

Elections make a fundamental contribution to democratic governance. They are a key process that is quite pivotal to the quality of a country’s governance. They can either greatly

The preamble ***“We the People”*** establishes a system of government that derives its power from the people. This is reflected when a society incorporates the most fundamental principle defining elections which is, that they must be credible and they must reflect the free expression of the will of the people. Equally important, elections should be transparent, inclusive, and accountable, and they must create equitable opportunities to compete.

The electoral cycle must depict elections as a continuous, integrated process as opposed to a series of isolated events. To achieve this, an ideal democratic society must provide for an electoral process that includes specific agencies which design the process that reflect on the will of the citizens and adhere to the relevant international laws and principles on elections.

This report takes into account the degree to which Kenya, as



advance or set back a country’s democratic development in the local, regional, and global sphere not only in upholding democracy, but they also bear a great impact on political, social and economic growth.

a country, upholds democratic principles and standards for elections. It will analyse and highlight gaps and challenges within the legal framework governing elections and propose the way forward.

BACKGROUND

Since Kenya transitioned into the multi-party democratic system in 1990, a common finding of the elections conducted thus far has been electoral violence. The electoral cycles have, in effect, triggered reforms to mitigate future electoral violence as well as to strengthen both the institutional and legal framework governing elections. For example, the Draft Constitution of Kenya 2004 (commonly known as the Bomas Draft) that captured cross-cutting issues, was addressed in the referendum held in 2005 and was rejected by 58% of voters. Another prominent example is the 2007- 2008 highly contested presidential election that resulted in the deaths and displacement of many Kenyans, which led to a lengthy constitutional review process.

Notably, the 2013 elections did not result in serious incidences of electoral violence, which was an indication that the adoption of the new Constitution of Kenya, 2010 had played a significant role in both legal and institutional reforms. The new Constitution created lower-level county governments that effectively reduced the power of the presidency. It also established other independent institutions not subject to manipulation by the executive for example, a reformed Judiciary and the Independent Electoral and Boundaries Commission (IEBC).

The 2017 general election was highly contested and resulted in a petition that went all the way to the Supreme Court of Kenya, which held that the Presidential Election of 8th August 2017 was not conducted in accordance with the Constitution and the applicable law. Therefore:

1. A declaration was issued that Uhuru M. Kenyatta was not validly declared as the President-elect and that the declaration was invalid, null and void.
2. An order was issued directing the Independent Electoral and Boundaries Commission (IEBC) to organise and conduct a fresh Presidential Election in strict conformity with the Constitution and the applicable election laws within 60 days.
3. It was determined that IEBC failed to conduct the Presidential Election in a manner consistent with the Constitution, 2010 and the Elections Act, 2011. The court was also satisfied that IEBC committed irregularities and illegalities in the transmission of results and this affected the integrity of the elections.

The decision impacted the country considering the physical effort and financial implications a new election would cause

and in such a limited time. The political crisis continued to deepen due to unresolved disagreements surrounding preparations for the fresh presidential elections. More importantly, the inadequacies of Kenya's electoral, legal and institutional mechanisms were exposed. A new election was finally conducted on 26th October 2017.

Recommendations were made on electoral legal reforms following the 2017 elections. It was advised that both the IEBC and Parliament move to ensure the operationalisation and implementation of various electoral laws. It also became equally important that laws that guarantee inclusivity and implementation of the two-third gender rule needed to be put in place. Further, it became clear that a national dialogue was necessary to evaluate and to respond to the national challenges and make practical recommendations and reform proposals to unite all Kenyans.

This report will review and consolidate electoral legal reforms as suggested by various stakeholder organisations and dialogue initiatives. The report will also review the ELOG-TWG matrix of recommendations and assess the extent of their implementation. It will also propose critical minimum reforms areas based on the ELOG-TWG Thematic areas and highlight key intervention strategies that can be adopted to advocate for the recommended electoral reforms.

At the onset, the report analyses the legal framework governing elections in Kenya from an international, regional and national perspective. It covers Kenya's legislation on political rights and elections and will analyse the essential components of electoral laws.

CHAPTER ONE

ELECTORAL LEGAL FRAMEWORK AND JURISPRUDENCE

All people have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

To give effect to the right to equal participation, countries are required to ensure that the right to vote is as inclusive as possible in terms of electors' eligibility criteria as well as the voters' capacity to make informed decisions regarding whom they elect. The right to vote and to be elected in elections that guarantee the free expression of the will of the electors, without discrimination or unreasonable restrictions, echoes universal suffrage.

The obligation of universality demands that although every State can determine who is eligible to participate in an electoral process, conditions must be non-discriminatory and as inclusive as possible.

Kenya's legislation on political rights and electoral processes cover the essential components of electoral laws but not as adequately as possible and not completely in accordance with international law.

A. THE INTERNATIONAL LEGAL FRAMEWORK GOVERNING ELECTIONS

The Constitution of Kenya, Article 2(5) and 2(6) integrate international instruments into the Kenyan law. The implication is that once international laws are ratified, they become legally binding.



Article 38 of the International Court of Justice Statute stipulates that the sources of international law include international conventions, whether general or particular and the general principles of law recognised by civilised nations, among others.

Kenya being a signatory to the UN Convention among other international laws has a set of international obligations for elections that are extrapolated from the United Nations (UN) treaties.

1. The Universal Declaration on Human Rights (UDHR)

The declaration recognises the need for universal protection



of all freedoms and rights in order for every individual to live their lives freely, equally and in dignity.

The declaration recognises the right to freedom of peaceful assembly and association and additionally, that no person should be compelled to belong to an association.

Article 21 of the Universal Declaration of Human Rights (UDHR) confers on each individual the right to take part in the affairs of the government of their country, directly or through freely chosen representatives and equal access to public service in their country. The declaration further goes on to provide that the will of the people should be the basis of the authority of government and is to be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

2. International Covenant on Civil and Political Rights (ICCPR)

The ICCPR ensures the protection of civil and political rights. It recognises the inherent dignity of each individual and undertakes to promote conditions within states, to allow the enjoyment of civil and political rights. It espouses the

ZERO DISCRIMINATION AGAINST WOMEN AND GIRLS



and public life of the country and in particular, to ensure that women are on equal terms with men. This includes the right:

- To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- To participate in non-governmental organisations and associations concerned with the public and political life of the country.

4. UN Convention on the Rights of Persons with Disabilities, 2006

The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13th December 2006 at the UN Headquarters in New York. The same was opened for signing on 30th March, 2007. Kenya ratified the Convention on 19th May, 2008. The Optional Protocol is however, yet to be signed to-date. The Convention promotes, protects and



ensures the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

The Convention poses an obligation on member states, to guarantee autonomy and independence of persons with disabilities, including the freedom to make their own choices and in addition, recognises that discrimination against any person on the basis of disability is a violation of their inherent dignity.

Article 29 of the Convention obligates parties to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others. The Convention



need for accessible and competent judicial, administrative or legislative authorities to provide remedy in the event of violation. This includes the need for all claims and appeals to be processed in a timely or expeditious manner.

Article 11 provides for the right to self-determination, peaceful assembly and the right to freedom of association, respectively.

Political rights as conferred on citizens are encompassed under Article 25 and are as outlined below:

- That every citizen has the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives;
- The freedom to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage;
- Elections shall be held by secret ballot;
- Free expression of the will of the electors and the right for everyone to take part in the running of the public affairs of their country.

3. Convention on the Elimination of All Forms of Discrimination against Women

The Convention ensures that state parties in particular in the political, social, economic and cultural fields take all appropriate measures, including legislation, to enable the full development and advancement of women.

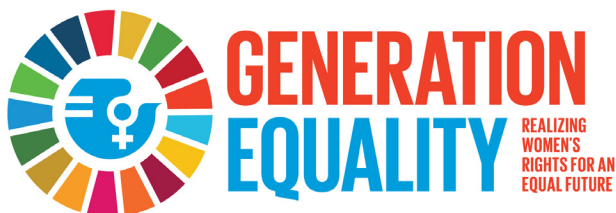
Article 7 requires state parties to take all appropriate measures to eliminate discrimination against women in the political

requires states to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected. The Convention requires states to commit through;

- Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
- Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation; and
- To stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate.

5. Beijing Declaration and Platform for Action (BPFA)

The Beijing Declaration and Platform for Action (BPFA) was unanimously adopted by Kenya in 1995. The declaration provides for:



- Equal responsibilities, opportunities and participation in all national, regional and international bodies and policy-making processes;
- establishment and strengthening of mechanisms at all levels for accountability to the world;
- Protect and promote the equal rights of women to engage in political activities and to freely associate;
- Take measures to ensure women's equal access and full participation in power structures and decision-making; establish gender balance in governmental bodies and committees, the Judiciary and all governmental and public administration positions;
- Recognise that shared work and parenting between women and men promote women's increased position in public life;
- Monitor and evaluate progress on the representation of women through regular collection and analysis of data.

B. REGIONAL LEGAL FRAMEWORK GOVERNING ELECTIONS

1. The African Charter on Human and People's Rights (Banjul Charter)

The Charter promotes and protects human rights and basic freedoms within the Region. It is imperative to note that the Charter not only provides for rights accorded to citizens and responsibilities of the State but also places duties on the citizens.



African Charter on Human and Peoples' Rights

Article 29 places duties on citizens not to compromise the security of the State which they are nationals or residents.

Article 2 states that every individual shall be entitled to the enjoyment of the rights and freedoms without distinction of any kind such as political or other status.

Article 9 provides for every citizen's right to receive information, express and disseminate his opinions within the law while Article 10 provides for the right to freely associate.

Article 13 provides for the right of every citizen to participate freely in the government of their country, either directly or through freely chosen representatives in accordance with the law and that every citizen shall have the right of equal access to the public services of their country.

2. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

The Protocol focuses on the rights of women in Africa. Article 2 provides for the elimination of discrimination against women and requires state parties to combat all forms of discrimination through appropriate legislative, institutional

AFRICA FOR WOMEN'S RIGHTS

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and other measures through the integration of a gender perspective in their policy decisions, legislation, development plans, programs and activities.

Article 9 enshrines the right to participate in the political and decision-making process. It obligates state parties to take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures.

Article 10 provides for the right to peace and that states should take all appropriate measures to ensure the increased participation of women in programs of education for peace and a culture of peace in the structures and processes for conflict prevention, management and resolution.

3. African Charter on Democracy, Elections and Governance, 2007

The Charter combines the key elements of democracy, human rights and governance.

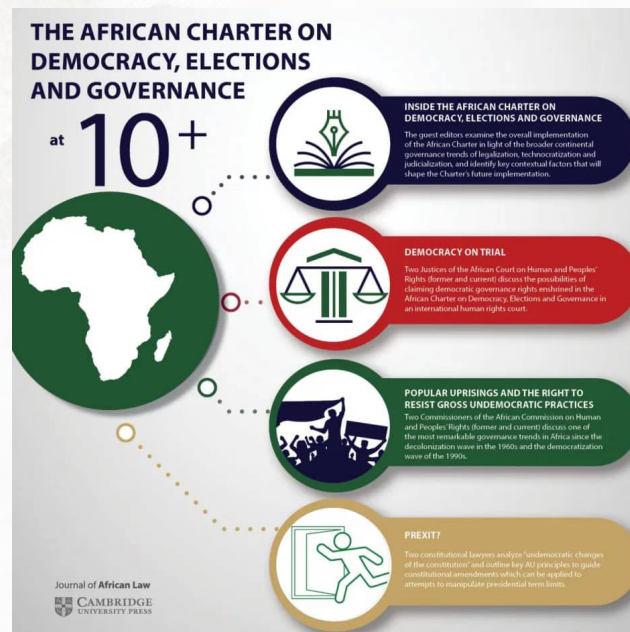
Article 4 obligates States to promote democracy, the principle of the rule of law and human rights, and recognise public participation through universal suffrage as the inalienable right of the people.

The Charter reiterates the government's commitment to regularly hold transparent, free and fair elections by establishing and strengthening independent and impartial national electoral bodies responsible for the management of elections.

States should put in place a binding code of conduct governing legally recognised political stakeholders, government and other political actors prior to, during and after elections.

The Charter provides that at request by a state party, a special independent advisory mission may be sent to a state conducting elections to provide assistance through an electoral observer mission drawn from competent experts in the area of election monitoring.

Signatory Parties are obligated to ensure that they promote strong partnerships and dialogue between government, civil society, and the private sector. They recognise the crucial role of women in the development and strengthening of democracy by creating the necessary conditions for full and active participation of women in the electoral process and



ensure gender parity in representation at all levels including the legislature.

Public participation by citizens shall be promoted by the State. This shall be achieved by creating appropriate structures taking into consideration citizens with special needs, youth and persons with disabilities. This may also be achieved by continuous sensitisation and civic education.

C. NATIONAL LEGISLATION ON ELECTIONS

The following laws directly govern the electoral process in Kenya:

1. The Constitution of Kenya, 2010

"Every citizen has the right to free, fair and regular elections based on universal suffrage."

The Constitution of Kenya is the supreme law and binds all persons and all state organs at both national and county levels of government. Further, the Constitution recognises that all sovereign power belongs to the people of Kenya and should be exercised either directly or through their democratically

elected representatives.

Chapter 4 stipulates that all rights belong to each individual and are not granted by the State. Article 36 provides for the freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.

Article 38 grants citizens the right to make political choices. This read in tandem with the Political Parties Act, safeguards the freedom to organise and join Political parties.

Article 81 establishes the general principles for the electoral system which include the freedom to exercise political rights, inclusivity, and universal suffrage based on the aspiration for fair representation and equality to vote.

Article 88 establishes the institutional framework mandated to oversee the electoral process in Kenya that is the Independent Electoral and Boundaries Commission (IEBC).



Article 91 provides for basic requirements for political parties which include promoting the objects and principles of the Constitution. The Constitution has mandated Parliament to legislate on the governance of political parties.

Chapter 6 of the Constitution on Leadership and Integrity is the nation's moral compass. It obligates all state officers in elective or appointed positions to uphold integrity and public confidence in the office they represent.

Kenya's 2010 constitution introduced provisions to its constitutional and legal framework to support the increased

participation of youth and women. Specifically, it mandated that "not more than two-thirds of the members of elective or appointive bodies should be of the same gender." The new Constitution also dedicated seats for women at the county level and a youth seat in the Senate. Despite these mechanisms, women represent only about nine percent (9%) of the officials elected in 2017.

Despite public and legislative debate on the issue, the assembly has failed repeatedly to pass legislation to implement the Gender Principle. A bill was re-introduced in February 2019, but the National Assembly was not able to achieve quorum to hold a vote on it. The legislation's future remains uncertain. The High Court's recent rulings indicate a real possibility that Parliament could be dissolved if it fails to implement the legislation but should Parliament pass the pending legislation, the earliest the gender rule could be enforced is at the next general election scheduled for the year 2022.

2. The Elections Act, (No. 24 of 2011)

This law seeks to address the conduct of elections and referenda, the registration of voters, and the determination of questions concerning registration.

It gives IEBC the mandate to determine election offences and resolution of election disputes by stating that the Independent Elections Boundaries Commission (IEBC) is responsible for the settlement of electoral disputes including disputes relating to or arising from nominations.

The Elections Act was enacted to operationalise Article 82 (1) (d) of the Constitution. The Act also seeks to regulate the conduct of elections to the office of the President, the National Assembly, the Senate, the county government and the county assembly.

The Act provides for the registration of voters and the determination of questions concerning registration. In line with Article 38(3) of the Constitution, the Act provides for the citizens' right to vote. The Act also provides for a Register of Voters to be kept and the registration of voters and revision of the register of voters to be carried out regularly.

Part III provides for presidential elections, parliamentary elections, county government elections, county assembly elections while Part VI provides for Election Offences.

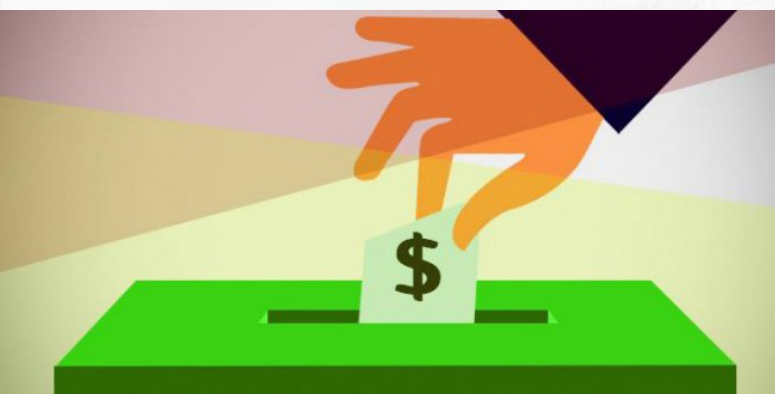
The Act provides for dispute resolution by the Commission. The Commission under Section 109 is tasked with formulating regulations to dictate how the provisions of the Act are applied.

3. The Election Laws (Amendment) Act, (No. 36 of 2016) and (No. 1 of 2017)

This Act provides for election offences and punitive measures, which include but are not limited to cause warning, disqualification, prosecution or imprisonment.

4. The Election Campaign Financing Act, (No. 42 of 2013)

This statute was passed by Parliament in 2013 to provide for the regulation, management, expenditure and accountability of election campaign funds during elections and referendum campaigns. The mandate of the IEBC under the Election Campaign Financing Act is drawn from Article 88(4)(i) of the Constitution of Kenya, 2010 and Section 4(i) of the IEBC Act, 2011 respectively.



However, the operationalisation of the Election Campaign Financing Act was suspended by Parliament, on the premise of the legality of the Regulations, which sought to put the Act into operation. While suspending the Regulations, it was noted that the IEBC had developed the Regulations and had them gazetted, without the approval of Parliament.

The passing of the Election Laws (Amendment) Act amended the Election Campaign Financing Act by inserting Section 1A to suspend the latter Act and provide that the same shall only come into force immediately after the general elections to be held in the year 2017.

After the 2017 elections were conducted and concluded, the Election Campaign Financing Act came in to force but has never been implemented during any of the by-elections conducted post-2017.

Section 6 of the Act, requires the Commission to make rules to regulate election campaign financing. Presently, the Commission is in the process of developing fresh Regulations to operationalise the Election Campaign Financing Act. These

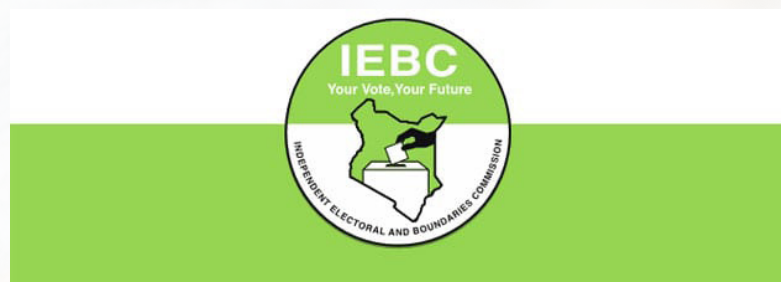
Regulations are still at the drafting stage.

5. Election Offences Act (No. 37 of 2016)

This Act came into force in the year 2016. It spells out various election offences and provides for punitive measures which include warning, disqualification, prosecution or imprisonment. However, from the past elections held, it was clear that public awareness on the offences contained therein is inadequate and sensitisation is needed to educate the Kenyan public.

6. The Independent Electoral and Boundaries Commission Act (No. 9 of 2011)

IEBC is established by Article 88(1) of the Constitution of Kenya. The IEBC Act, 2011 states that its mandate and responsibility is to conduct or supervise elections to any elective office and binds its officials and members to a code of conduct. The Act outlines IEBC's functions, the composition and appointment of commissioners, the Code of Conduct and it provides for the mechanism on financing and measures on accountability.



The Act makes provision for the appointment and effective operation of the Independent Electoral and Boundaries Commission (IEBC) as established by the Constitution. The objectives of the Act as provided for in Section 3 include:

- Provide for the operations, powers, responsibilities and functions of the Commission to supervise elections and referenda at County and National government levels;
- Provide a legal framework for the identification and appointment of the chairperson, members and the secretary of the Commission pursuant to Article 88(1), (2) and (3) and 250(2) of the Constitution;
- Provide for the manner of the exercise of the powers, responsibilities and functions of the Commission pursuant to Article 88(5) of the Constitution; and
- Establish mechanisms for the Commission to facilitate consultations with interested parties pursuant to Article 89(7) of the Constitution; and
- Functions of the Commission.

The Act provides for the general principles of the Commission in

carrying out its functions which include undertaking elections on a regular basis in accordance with the Constitution.

7. Political Parties Act (No. 11 Of 2011)

The Political Parties Act came into force on 1st November, 2011. The Act regulates the formation and operation of political parties. It provides for the registration of political parties, funding, resolution of disputes, membership of political parties, restrictions of public officers and disqualification from holding office of a political party, resignations, corporate status, coalitions, mergers, contents or rules of political parties, records of political parties, public meetings of political parties, deregistration and effect of deregistration, political parties fund - its purpose and the distribution of the fund.

Part IV of the Act establishes the Office of the Registrar of Political Parties and stipulates the functions of the Registrar. Part VI establishes the Political Parties Disputes Tribunal (PPDT) and specifies its jurisdiction.

The Act establishes the Political Parties Fund to be administered by the Registrar of Political Parties. The Fund promotes accountability, transparency and fair competition between parties. The proposed legislation would provide for distribution of the Fund, restriction of sources of funds, disclosure and audit of the Fund. However, it is yet to be enforced in the Kenyan context.

The Act provides for a Code of Conduct which regulates the behavior of members and office holders of political parties, aspiring candidates, candidates and their supporters, promotes good governance and eradicates political malpractices.

8. The Finance Act 2018, (No. 10 of 2018)



This Act was enacted in 2018. However, it fails to address key areas on Electoral Law as required by international standards. These areas include:

- General political party activities;
- Campaign finance; and
- Abuse of state resources.

It also fails to provide further provisions to advance Article 201 of the Constitution on the principles of public finance.

9. The Access to Information Act Kenya, (No. 31 of 2016)



This Act was enacted in 2016 and allows citizens to request and get information from the state and private companies. This is in accordance with Article 35 of the Constitution which gives citizens the right to:

- Information held by the State;
- Information held by another person and required to exercise or protect any right or fundamental freedom;
- Under Article 35 the State is required to publish and publicise any information affecting the nation, effectively lifting the shroud of secrecy and mystery around the government.

Article 201 of the Constitution highlights the principles of public finance underpins the intersectionality of transparency, accountability and participation.

The Act also provides strict timelines for the provision of information (15 to 21 days), which is reduced to 48 hours if the information has implications on the life or on the liberty of a person. If an organisation fails to avail the information or refuses to, then an applicant should appeal to the Commission on Administrative Justice (CAJ), which will review the matter within 30 days. If this channel fails, one may directly petition the High Court to compel the organisation to avail the information.

Despite the progressive constitutional requirements, government culture continues to lag. This is rooted in the persistence of flawed electoral processes, which undermine political accountability. In this regard, the ability of the courts and oversight institutions such as the CAJ is significantly weakened.

CHAPTER TWO

ELECTORAL LEGAL REFORMS POST-2017 ELECTIONS AND THE STATUS ON IMPLEMENTATION

Legal or law reform is defined as the process of examining existing laws and advocating for and implementing change in a legal system with the aim of enhancing justice. Therefore, electoral legal reforms can be described as changes in electoral laws that can improve the conduct of elections and overall governance of a country while continuing to uphold the principles of democracy.

Electoral legal reforms are key in contributing to better participation of citizens in electoral processes, reducing corruption and strengthening democracy. Free and fair elections are the result of a sound electoral management system that is itself founded upon an effective legal framework. An 'ideal electoral system' is subject to certain cross-cutting principles which can be narrowed down to the following;

- Must comply with the principle of freedom of citizens to exercise their political rights;
- Must comply with the principle that not more than two-thirds of members of elective bodies be of the same gender;
- Must comply with the principle of fair representation of persons with disabilities;
- Must comply with the principle of universal suffrage based on the aspiration for fair representation and equality to vote; and
- Must comply with the principle of free and fair elections.

These principles are key in developing appropriate electoral legal reforms and guide the respective players in the electoral system in making laws, rules, regulations, administrative decisions and guidelines.

As earlier mentioned, Kenya embraced a democratic multi-party system in 1990 with every electoral cycle facing its own unique set of challenges. One of the most critical cycles was the 2007–08 electoral cycle, when the disputed presidential election resulted in an estimated 1,300 deaths and over 600,000 displacements, which the International Criminal Court (ICC) ruled amounted to crimes against humanity. As a result, the country embarked on an intense constitutional review process that led to the promulgation of the 2010 Constitution. Many of these reforms were aimed at mitigating future electoral conflicts. Some of these reforms included:

- a. Establishing a two-tier government, with 47 county governments alongside the national government;
- b. Devolution of both economic and decision-making power to elected governors and county legislatures;
- c. Strengthening of the judiciary by securing its financial, operational and administrative independence and designating the Supreme Court with primary jurisdiction to hear and determine petitions in presidential elections;
- d. Establishing IEBC whose role includes enforcing the law relating to election offenses for example, practices such as voter bribery and intimidation. Perhaps by aiming to send a strong message to candidates, the IEBC's Conflict Resolution Committee has issued severe penalties including disqualifying some candidates and imposing stiff fines on others for example where an incumbent governor and his challenger were fined 1 million shillings (\$10,000) each for inciting violence between their supporters that resulted in the death of a vendor.
- e. Establishing the Political Parties Dispute Tribunal (PPDT) to hear cases on appeal from the decisions of party election boards, which is key in avoiding violence arising out of nominations and further enhancing the legitimacy of the electoral process. In the 2017 election cycle, the Tribunal adjudicated over 260 cases. However, its effectiveness is limited by the amount of time allocated to a particular case based on deadlines set by the IEBC.

In the 2017 electoral cycle, the Supreme Court of Kenya set a historic legal reform precedent with the annulment of the presidential elections with Kenya becoming the fourth country in the world to nullify presidential elections after Ukraine, the Maldives, and Austria. The historic ruling is also evidence of the strides in the judicial system and the commitment to uphold the rule of law. It is important to note that after that, the High Court's April 2018 decision struck down most of the provisions in the 2017 Elections Act amendments. The National Assembly passed the Act after the Supreme Court's annulment of the August 2017 presidential elections but before the fresh presidential re-run election in October 2017.



The Carter Center noted that the 2018 High Court ruling is likely to complicate future efforts to reform the electoral system through legislation because any changes to the legal framework that are viewed as contrary to the 2010 Constitution's requirements for free, fair, transparent, and accountable elections are likely to be deemed unconstitutional. Notably, there are various discrepancies on the application of the 2017 Supreme Court Ruling in quite a number of cases filed thereafter with the most glaring disparity being that the ruling was mostly upheld in Court of Appeal and High court decisions, while subordinate Courts gave contrary decisions in their rulings when applying this precedent.

Other notable court decisions are Petition No. 207 of 2016 where the High court held that IEBC had no power to vary the numbers following their transmission to Nairobi as had been the case in past elections. The court stated that the Commission had no power to verify or confirm the results declared by the constituency returning officer. These decisions have been key in providing the structure of the electoral process, enhancing its credibility and subsequently initiating legal reforms.

There remains a gap and lack of harmonisation among the various laws that govern elections and generally on what constitutes a substantial and non-substantial violation of the principles in the Constitution and the law. There is an urgent need to consider appropriate legal reforms to bring the legal framework around electoral dispute resolution into alignment with international practice.

In summary, the electoral reforms built into the 2010 Constitution to date, have had a meaningful impact on strengthening the transparency and credibility of the electoral process. Many of these reforms are still taking shape, and some are yet to be implemented. Nonetheless, the emerging independence of the Kenyan courts, in particular, created a pillar of credibility for the 2017 elections and strengthened Kenya's democracy and adherence to international standards. Moreover, initiatives such as the National Dialogue Conference 2018, Building Bridges Initiative 2019 and other reports from stakeholders for example NCKK, Dialogue Reference Group (DRG), ELOG among others, provide appropriate reforms to bring the electoral legal framework into alignment with international practice.

every electoral process through domestic election observation findings and recommendations and continuous dialogue between electoral stakeholders. The following were identified by the ELOG and members of the Civil Society Organizations' Technical Working Group (TWG) on elections as key thematic areas and were highlighted based on emerging issues as identified in the last electoral cycle:

- Elections and Voter Registration
- Elections and Voter Education
- Elections and Legal Reforms and Advocacy
- Elections and Political Party Affairs and Campaign Financing
- Elections and Electoral Violence
- Elections and Media Monitoring
- Elections and participation of special interest groups

Below is a matrix analysis of the thematic areas as identified by ELOG, with specific focus on electoral legal reforms and the current status of the legal reforms in terms of implementation (if any). These areas are key in informing future electoral processes and seek to provide a clear roadmap towards the electoral reform agenda in Kenya:



ELOG has continuously highlighted issues that emerge in

THEMATIC AREAS	SUGGESTED LEGAL REFORMS-RECOMMENDATIONS FROM STAKEHOLDER ORGANISATIONS & DIALOGUE INITIATIVES	CURRENT STATUS ON PENDING BILLS AND / OR LEGISLATION
Elections and voter registration	ELOG- Amend the Elections Act, 2011 to provide for the integration of civil and voter registration processes to realise 100% National Voter Registration Rate.	ELOG memorandum was forwarded to the Building Bridges Taskforce in February, 2020. The validation process of the BBI Report was concluded in March, 2020. The Referendum Bill, 2020 was gazetted on 15th May, 2020. The Bill seeks to provide a framework on how a referendum should be conducted in line with BBI proposals and this will also determine the date of the referendum.
	The National Council of Churches of Kenya (NCCCK) in its memorandum to the Senate Justice Legal Administration Committee, proposed the general amendment of the Constitution in relation to voter registration for purposes of: clarity, the right to vote, qualification of registration as a voter and the mandate of the IEBC in relation to voter registration.	The NCCCK presented its Memorandum on Electoral Reforms to the Chair of the Senate Justice Legal Administration Committee in 2018 on the Election Laws Amendment Bill, 2018 and the Election Laws (Amendment) (No. 2), 2018.
	There have been no other policy or legal reforms taken up so far in this area since the Elections (Voter Registration) Amendment Regulations, 2017.	
Elections and political party processes	ELOG- recommends clarity on the electoral complaints dispute resolution processes: Resolve jurisdictional issues between the IEBC and the Political Parties Disputes Tribunal (PPDT).	The Political Parties (Registration) Regulations, 2019 and the Political Parties (Funding) Regulations, 2019 were tabled before the National Assembly in September, 2019. Both regulations were approved save from Section 18 of the Political Parties (Funding) Regulations, 2019 which was annulled as it inappropriately delegated legislative powers to the Registrar to set general guidelines, conditions for the management of the fund.
	ELOG- devolve election dispute resolution processes to the counties and boost funding for PPDT in particular by amending Section 44 (1) of the Political Parties Act to create a Fund similar to Political Parties Fund. Alternatively, amend Section 25 of the Act, to allow PPDT to benefit from the fund.	There are proposed amendments to the Election Campaign Financing Act No. 42 of 2013 through the Election Campaign Financing (Amendment) Bill, 2019 which is currently at the drafting stage.
	ELOG- recommends clarity on the electoral complaints dispute resolution processes: Resolve jurisdictional issues between the IEBC and the Political Parties Disputes Tribunal (PPDT).	The Jurisdiction of the Political Parties Dispute Tribunal (PPDT) remains the same. Established under Section 39 of the Political Parties Act. It hears and determines disputes from political parties comprised of seven (7) members, quorum is three (3) members and one (1) must be an advocate.

	<p>ELOG-Amend Section 25 of the Political Parties Act to provide a specific % of funding for all registered political parties and another % distributed based on performance during the last general election.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>ELOG- Amend the Political Parties Act to compel the Auditor General to audit all political parties irrespective of whether they receive public funds or not.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>ELOG- Implement the Election Campaign Finance Act of 2013.</p>	<p>As duly amended by Section 32 of the Election Laws (Amendment) Act of 2017, Section 1A of the Election Campaign Finance Act of 2013 states that the Act shall immediately come into force after the 2017 general elections. There are proposed amendments to the Election Campaign Financing Act No. 42 of 2013 through the Election Campaign Financing (Amendment) Bill, 2019 which is currently at the drafting stage. The Bill if approved, intends to operationalise the Election Campaign Finance Act, 2013.</p>
	<p>ELOG- Political Parties to revise their constitutions and nominations rules to make them compliant to the Elections (General)(Amendment) Regulations, 2017, Elections (Voter Education) Regulations 2017 and the Elections (Party Primaries and Party Lists) Regulations, 2017.</p>	<p>There have been no publicised revisions to political parties constitutions.</p>
	<p>Article 88 of the Building Bridges Initiative (BBI) recommends for a mechanism that gives leaders of parliamentary political parties a role in the recruitment of Commissioners of the Independent Electoral and Boundaries Commission (IEBC).</p> <p>The BBI taskforce recommends that the principle of fair, free and transparent elections be provided for in the Political Parties Act.</p> <p>BBI suggests for parties to be compelled through the Political Parties Act to be consistent with the Constitution to meet the Two-Thirds Gender Rule and other Constitutional measures of inclusion through their party lists.</p>	<p>The validation process for the Building Bridges Initiative (BBI) Report was concluded in March, 2020. The Referendum Bill, 2020 was gazetted on 15th May, 2020. The Bill seeks to provide a framework on how a referendum should be conducted in line with BBI proposals and this will also determine the date of the referendum.</p>

	<p>NCCK memorandum to the Senate Legal Justice Administrative Committee proposes amendment of Section 7 (2) of the Political Parties Act, to allow political parties' appointees to the Commission, in addition to the existing IEBC Commissioners.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>NCCK memorandum proposes an amendment to the IEBC Act to provide for both part-time and full-time Commissioners with Political Party appointees being part-time.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>NCCK memorandum proposes the enforcement of constructive resignation from a political party contemplated under Section 14 (5) of the Political Parties Act to enforce party discipline.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>NCCK memorandum proposes that political parties review their nomination rules and procedures to ensure that more women are nominated in positions of leadership.</p>	<p>The Representation of Special Interest Groups Laws (Amendment) Bill, 2019 is currently before the National Assembly. It gives effect to Article 100 of the Constitution and proposes a number of things including that the IEBC Act, 2011 and all other electoral related laws define special interest groups as provided in the Constitution. The Bill went through the First Reading in July, 2019.</p>
	<p>NCCK memorandum to the Senate proposes the amendments to Part III (Allocations and Disbursement of Political Parties Fund) of the Political Parties Act to review the threshold for eligibility to compensate.</p>	<p>Only a minor amendment was done to the Political Parties Act in May, 2016 to Section 25, which was administrative since it focused on composition of members. No further amendments have been made post-2017.</p>
	<p>NCCK memorandum proposes the amendment of Section 10 and 11 of the Political Parties Act, to provide for sufficient clarity with respect to mergers, coalition and post-election agreements.</p>	
	<p>NCCK memorandum to the Senate proposes the enactment of a regulation to empower the Registrar of Political Parties to sufficiently administer the Political Parties Fund and ensure the maintenance of records, audit, review of books, disclosure of expenditures and contributions.</p>	<p>The Political Parties Act (Registration) Regulations, 2019 (Kenya Gazette Supplement No. 139) and the Political Parties Act (Funding) Regulations, 2019 (Kenya Gazette Supplement No. 141) were tabled before the National Assembly in September, 2019. Both regulations were approved save from Section 18 of the Political Parties (Funding) Regulations, 2019 which was annulled as it inappropriately delegated legislative powers to the Registrar to set general guidelines, conditions for the management of the fund.</p>

	<p>NCKK memorandum to the Senate proposes the harmonisation of the Elections Act and the Political Parties Act to operationalise Political Parties Liaison Committee as an effective Alternative Dispute Resolution Forum.</p>	<p>Only a minor amendment was done to the Political Parties Act in May, 2016 to Section 25 which was administrative since it focused on composition of members. No further amendments have been made post-2017.</p>
	<p>NCKK memorandum to the Senate proposes the amendment of Section 40 of the Political Parties Act and Section 74 of the Elections Act (2011) to guarantee more clarity on the overlapping jurisdictions between the Political Parties Disputes Tribunal, IEBC and the High Court on disputes arising from nominations.</p>	
	<p>NCKK memorandum to the Senate proposes the amendment of Section 40 of the Political Parties Act in order to ensure that the Appellate jurisdiction on the decisions of the Political Parties Disputes Tribunal (PPDT) that potentially extend all the way to the Supreme Court can be reviewed.</p>	
<p>Elections and persons with disabilities</p>	<p>ELOG- Formulate and enforce regulations requiring that political parties disclose the number of youths who are their members and officials and also to disclose the Party's policy for affirmative action for women, youth, Persons with Disabilities (PWDs) and marginalised communities as a requirement for registration.</p>	<p>The Independent Electoral and Boundaries Commission (Amendment) Bill, 2019, National Assembly Bills No. 24 which provides for the mandatory representation of one person nominated by the National Council for Persons with Disabilities. The Bill went through the First Reading in May, 2019 and is awaiting the Second Reading.</p>
	<p>ELOG Enhance participation of people with disabilities and advocate for inclusive Persons with Disabilities policies.</p>	<p>The Representation of Special Interest Groups Laws (Amendment) Bill, 2019 is currently before the National Assembly. It gives effect to Article 100 of the Constitution and proposes a number of things including that the IEBC Act, 2011 and all other electoral related laws define special interest groups as provided in the Constitution. The Bill went through the First Reading in July, 2019.</p>
		<p>The Constitution of Kenya (Amendment) (No. 2) Bill, 2019 seeks to amend Article 97 of the Constitution which provides for twelve members nominated by parliamentary political parties to represent special interest groups including the youth, persons with disabilities and workers. The Constitution of Kenya (Amendment) (No.2) Bill, 2019 proposes that the number of seats be increased to twenty-two persons with disabilities nominated by parliamentary political parties. The Bill went through the first reading stage in July, 2019.</p>

	<p>ELOG- Need to re-look at the comprehensiveness of the concept of disability as captured in the legal instruments through a combination of definitions from the 2003 Persons With Disabilities Act, Constitution of Kenya, Convention on the Rights of Persons with Disabilities and different impairments recognised by the National Council for Persons with Disabilities all of which provide a base for defining disability.</p>	<p><i>The Persons with Disabilities (Amendment) Bill, 2019 (Senate Bill No. 1)</i> which seeks to provide a comprehensive and all-encompassing definition of disability, was tabled before Parliament. It went through the first reading stage in May, 2019.</p>
	<p>ELOG- Focus on special interest groups for example, by developing laws to support their accessibility to polling stations and to voter material.</p>	<p><i>The Representation of Special Interest Groups Laws (Amendment) Bill, 2019</i> under Clause 19 amends Section 40 of the Elections Act, 2011 by inserting the following new sub-section 'immediately after sub-section (1): 1(A) in providing voter education the Commission shall; Ensure the participation of special interest groups in its programs; and Sensitise voters on the inclusion of special interest groups in the electoral process. Clause 5d of the Bill requires the amendment of the IEBC Act, 2011 to include the use of communication modes accessible to persons with disabilities.</p>
	<p>ELOG- Pass the Independent Electoral and Boundaries Commission (Amendment) Bill, 2019 which provides for the mandatory representation of one person nominated by the National Council for Persons with Disabilities.</p>	<p>The Bill went through the First Reading in May, 2019 and is awaiting the Second Reading.</p>
	<p>The Carter Centre report recommended the review and implementation of compliance with the constitutional requirements to protect and promote the rights of vulnerable communities or special-interest groups.</p>	<p><i>The Constitution of Kenya (Amendment) Bill, 2019 (National Assembly Bill No. 53)</i> seeks to ensure that the membership of Parliament also reflects the requirement of Article 54(2) of the Constitution that at least five percent of the members of the public in elective and appointive bodies be persons with disabilities. The first reading was done in July, 2019. The Bill is awaiting the Second Reading.</p>
	<p>The United Disabled Persons of Kenya (UDPK) and the Caucus on Disability Rights Advocacy (CDRA) memorandum to the National Steering Committee on Implementation of the Building Bridges Initiative Taskforce proposed the implementation of Article 177 of the Constitution on the representation of persons with disabilities in county assemblies. Seventeen (17) of the forty-seven (47) county assemblies do not have any persons with disabilities as representatives while 8 have only one (1) representative.</p>	

	<p>UDPK and CDRA memorandum proposes the amendment of the electoral system to provide for an electoral college system for PWDs. This will allow PWDs to determine who will specifically represent them in addition to ensuring gender equality among persons with disabilities as well as different disability categories. It infers the need to amend the Constitution and specifically Article 86 on voting.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>NCCK- Recommended the review of Section 38 of the Elections Act to determine the priority of marginalised persons and the review of provisions of Sections 34-38 of the Elections Act, 2011 against the County Government Act, 2012 to address the composition of the marginalised groups for purposes of harmonising the provisions under the two Acts on the number of seats to be allocated.</p> <p>UDPK and CDRA propose the enactment of a substantive legislation to give effect to Article 100 of the Constitution on the promotion of representation of marginalised groups to include PWDs.</p>	<p><i>The Representation of Special Interest Groups Laws (Amendment) Bill, 2019</i> is currently before the National Assembly. It gives effect to Article 100 of the Constitution and proposes a number of things including that all electoral-related laws promote the representation in Parliament of special interest groups through for example; enhancing the funding of special interest groups through assured disbursements from the Political Parties Fund. The Bill went through the First Reading in July, 2019.</p>
	<p>UDPK and CDRA memorandum recommend that electoral laws be amended to ensure the inclusion of persons with disabilities and ensure implementation or compliance with relevant laws. For instance, amend the Political Parties (Funding) Regulations, 2014 to ensure funding for disability concerns.</p>	<p>The validation process for Building Bridges Initiative (BBI) policy document was concluded in March, 2020. However, the first BBI Report as published has not taken into account the challenges faced by persons with disabilities. This issue will need to be reconsidered to ensure inclusivity.</p> <p>The Constitution of Kenya (Amendment) Bill, 2019 (Senate Bills No. 16) proposes to introduce clauses 97 (1A) and (1B) and 98 (1A) and (1B) which require the elections for the special seats to be undertaken in accordance with Article 90. Article 90 provides for the allocation of party-list seats, which shall be on the basis of proportional representation by use of party lists. The Bill was referred to the Committee on Justice, Legal Affairs and Human Rights. The Committee Report was tabled on 21st November, 2019. The Bill is scheduled to come up for the Second Reading.</p>

Elections and security	The Carter Centre EOM report recommended that the role of the security forces during elections should be reviewed and the use of excessive force and other misconduct be urgently looked into.	No specific policy or legal reform has been taken up so far. However, various civil society organisations including the Law Society of Kenya and the Kenya National Commission on Human Rights have consistently taken up pro bono cases that address citizens' concerns on infringement of human rights during elections.
	The KNCHR recommended for the application of legal measures to ensure rapid response on humanitarian grounds and prompt assistance in response to the election-related conflict in the country.	
	ELOG- Develop mechanisms for taking action against security personnel who violate the law with regard to the conduct of elections.	
Elections and participation of prisoners and diaspora	ELOG- Amend the first schedule of the Constitution to provide for the 48th Diaspora County and subsequent additional constituency for the diaspora.	<i>The Constitution of Kenya (Amendment) No. 2 Bill, 2019</i> which seeks to amend Article 97 (1) of the Constitution by inserting the words "Kenyans in the diaspora" immediately after the word "including." This will ensure the consideration of persons in the diaspora under special interest groups to be catered for in the party lists from which twelve Members are nominated to the National Assembly. The Bill was gazetted in June, 2019.
	ELOG- Review existing Diaspora policy to take into cognisance the context and challenges that Kenyans in the diaspora face in their quest to exercise their voting rights, to inform the diaspora voter registration and voting procedures.	The recommendation has remained at the proposal stage.
	ELOG- Elections Act, 2011 and the Elections (General) Regulations 2011 to be amended to clearly provide that one cannot vote using an expired passport.	The recommendation has remained at the proposal stage.
	ELOG- Remove the unconstitutional requirement for a person must hold a 'regular passport' to vote.	The recommendation has remained at the proposal stage.
	ELOG- Articulate a comprehensive legal framework for the implementation of voter registration for Kenyans living in the Diaspora.	The recommendation has remained at the proposal stage.

	ELOG- Set up prisoner regulations as provided for by the <i>Elections Amendment Act 2017</i> , before the next General Elections. The regulations will set a clear roadmap in enabling future management of prisoners' electoral governance.	The recommendation has remained at the proposal stage.
	IEBC Post-Election Evaluation Report recommended that the Commission review its policy on registration and voting among Kenyan citizens residing outside Kenya.	The recommendation has remained at the proposal stage.
Elections and participation of women	ELOG- Prescribe and apply stiff penalties against any political party or person who abuses laws and regulations made for purposes of gender inclusivity.	The recommendation has remained at the proposal stage.
	ELOG- Parliament to work towards a practical formula towards the implementation of the Two-Thirds Gender Rule at parliamentary level. This will ensure a higher representation of women in the legislature. The Office of the Registrar of Political Parties (ORPP) should tighten and enforce regulation on Political Parties that do not truly mainstream gender in their operations. The punitive measures for parties which do not comply should be fully adhered to such as deregistration of parties.	<i>The Constitution of Kenya (Amendment) Bill, 2018, National Assembly Bills No. 4</i> also known as the Duale Bill on the two-third Gender Principle, was re-introduced in February 2019, but the National Assembly was not able to achieve quorum to hold a vote on it despite an existing court order.
	The Carter Centre report recommended urgent implementation of the Two-Thirds gender rule as required by the Constitution.	
	Article 94 of the BBI provides for the inclusion of women in leadership at all levels and measures to comply with the Two-Thirds Gender Rule and ensure women are visible in leadership will establish a more level playing field when it comes to electoral competition.	The validation process for the Building Bridges Initiative (BBI) Report was completed in March, 2020. The BBI Report intends to effect the two-third gender rule.

	<p>The National Council of Churches of Kenya (NCCCK) proposes the amendment of Article 97 and 98 to introduce proportional representation to facilitate the realisation of 30% women representation. Additionally, to facilitate the implementation of Articles 27 (8) and 81 (b) on affirmative action, on the two-thirds gender rule in elective bodies.</p> <p>The Dialogue Reference Group recommended that the Two-Thirds Gender Rule be strictly enforced in all elective and appointive bodies and political parties.</p>	<p>The Constitution of Kenya (Amendment) Bill, 2019 No. 53 of 2019 which seeks to amend the Constitution by parliamentary initiative in terms of Article 256 of the Constitution. The Bill seeks to amend the Constitution in order to ensure that the number of Members of Parliament reflects the requirement of Article 27 (8) that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. The Bill went through the first reading stage in July, 2019.</p> <p>The Constitution of Kenya (Amendment) Bill, 2019 (Senate Bills No. 16) proposes to amend Article 97 on the composition of the National Assembly to ensure that the composition of the National Assembly complies with the requirement that not more than two-thirds of its members are of the same gender. The new paragraph would require the election, through party lists, of the number of special seat members necessary to ensure that no more than two-thirds of the membership of the National Assembly is of the same gender.</p> <p>The same Bill further proposes to amend Article 98(1) of the Constitution on the composition of the Senate to ensure that the Senate complies with the requirement that not more than two-thirds of its members are of the same gender. The new paragraph would require the election, through party lists, of the number of special seat members necessary to ensure that no more than two-thirds of the membership of the Senate is of the same gender. These measures would be expected to completely resolve the gender representation issues. The Bill was referred to the Committee on Justice, Legal Affairs and Human Rights. The Committee Report was tabled on 21st November, 2019. The Bill is to come up for the Second Reading.</p> <p>The Constitution of Kenya (Amendment) Bill, 2019 (National Assembly Bills No. 53) which seeks to amend the Constitution in order to ensure that the number of Members of Parliament reflect the requirement of Article 27 (8) that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. Specifically, amend Article 97 to increase the number of elected women members of the National Assembly from forty-seven to one hundred and thirty-six. The proposal contains a sunset clause of ten years with a window of extension for a further ten years through an Act of Parliament.</p>
		<p>The Bill further proposes the amendment of Article 98 to provide for the election of two members of the Senate of each gender by the electorate in the counties and the amendment of Article 177 to provide for the election of a woman member of the County assembly for at least every two wards within each county for the purpose of gender parity and remove the provision on post-election gender top-up seats. The first reading was done on 24th July, 2019. The Bill is awaiting the Second Reading</p>

<p>Elections and participation of youth</p>	<p>ELOG- Prescribe and apply stiff penalties against any political party or person who abuses laws and regulations made for purposes of empowering the youth.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>ELOG- Make it a mandatory requirement in law for Political Parties to support youth candidates vying for elective seats by waiving nomination fee for the youth.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>ELOG- Formulate and enforce regulations requiring that political parties disclose the number of youth that are their members and officials and the Party's policy for affirmative action for women, youth, PWDs and marginalised communities as a requirement for registration.</p>	<p>The Representation of Special Interest Groups Laws (Amendment) Bill, 2019 is currently before the National Assembly. It gives effect to Article 100 of the Constitution. It proposes a number of things including that all electoral-related laws promote the representation in Parliament of special interest groups for example the youth. The Bill went through the First Reading in July, 2019. The Bill is currently in the Second Reading awaiting all pending reports to be presented by Committees.</p>
	<p>ELOG- Political Parties to revise their constitutions and nominations rules to make them compliant to the Elections (General)(Amendment) Regulations, 2017, Elections (Voter Education) Regulations 2017 and the Elections (Party Primaries and Party Lists) Regulations, 2017.</p>	
	<p>The Dialogue Reference Group recommended the amendment of the Constitution to reduce the number of Members of the National Assembly to 209, comprising of members elected from 150 constituencies, 47 Women Representatives, and 12 Special members. The provisions under this proposal will be structured to fulfil the gender, youth and persons with disabilities representation requirements.</p>	
	<p>ELOG- Gazette and implement amendments to the Elections Act allowing voter registration using waiting cards.</p>	
<p>Elections administration and management</p>	<p>ELOG- Undertake independent review of the 2017 electoral process: Engage an independent institution to undertake a comprehensive legal and institutional audit of the IEBC management and administration of the entire 2017 electoral process.</p>	<p>The recommendation has remained at the proposal stage.</p>

	ELOG- Develop model rules for internal dispute resolution mechanisms.	The recommendation has remained at the proposal stage.
	ELOG- Amend the IEBC Act to provide that if a new Commission is to be established, it has to be established at least two years before the elections.	<p><i>The Independent Electoral and Boundaries Commission (Amendment) Bill, 2019 (No. 24 of 2019)</i>- The principal object of this Bill is to amend the First Schedule to the <i>Independent Electoral and Boundaries Commission Act, 2011</i> to provide for a mechanism of appointing members of the Independent Electoral and Boundaries Commission. As it is presently, the Selection Panel that was established under the First Schedule to the Act stood dissolved upon the appointment of the current Members of the Independent Electoral and Boundaries Commission. Hence there existed a vacuum as to the mechanism of appointing members of the Independent Electoral and Boundaries Commission in case of a vacancy or lapse of the term of office of any Member of the Commission. The Bill was passed into law in October, 2020.</p> <p><i>The Independent Electoral and Boundaries Commission (Amendment) Bill, 2019 (No. 24 of 2019)</i> - First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 which seeks to improve the process of appointments of the IEBC Chairperson and the Commissioners by the President and the National Assembly within seven days of the declaration of a vacancy in the office of the chairperson or member of the Commission. The Bill went through the first reading on 2nd May, 2019.</p>
	ELOG recommends that IEBC should strengthen its legal department and strictly adhere to the electoral laws to avoid numerous litigation processes that impact its work. IEBC must adhere to the constitutional and legal requirements of integrity of the aspirants to clear them to vie for various seats. The IEBC must not wait for a court case to be filed and be determined before it can bar a candidate with integrity issues from the electoral process. IEBC should partner with other government institutions to vet and ensure that all candidates vying for an election meet the legal threshold.	<i>Lifestyle Audit Bill 2019</i> seeks to curb corruption among public officers in the Judiciary and other commissions' mandated to oversee the electoral process. The Bill is yet to go through the first reading.
	ELOG- Amend the Constitution to separate presidential and members of the National Assembly elections from Governors, Senators and MCA elections.	The recommendation has remained at the proposal stage.

	<p>ELOG- Amend article 140 (1 & 2) of the constitution to increase the timeline for filing, hearing and determination of the presidential elections within 30 days.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>BBI- All IEBC staff should be employed on a three-year contract, renewable only once.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>BBI- Returning officers to be hired through a process like that used for commissioners, with the involvement of public participation.</p>	<p>The validation process for the Building Bridges Initiative (BBI) Report was concluded in March, 2020. The Referendum Bill, 2020 was gazetted on 15th May, 2020. The Bill seeks to provide a framework on how a referendum should be conducted in line with BBI proposals and this will also determine the date of the referendum.</p>
	<p>BBI- Returning officers should be contracted on a part-time basis and should not oversee more than one general election.</p>	
	<p>BBI- Any person with at least fifteen (15) years of management experience at senior level should qualify to apply for Chairmanship of IEBC. It should not be the preserve of lawyers. However, one of the Commissioners should be a lawyer.</p>	<p>The recommendation to amend Article 164 has remained at the proposal stage.</p>
	<p>BBI- All current senior officers of IEBC should be vetted.</p>	
	<p>BBI- Separate the duties of Secretary and Chief Executive Officer; make the Chairman of the Commission the Chief Executive Officer.</p>	
	<p>BBI proposes a mechanism to give leaders of parliamentary political parties a role in the recruitment of Commissioners of IEBC.</p>	
	<p>NCKK memorandum to the Senate proposed the amendment of S. 6(1) of the IEBC Act on the qualification of the Chair and the Vice-chair to be the same and they need not be advocates.</p>	
	<p>The NCKK memorandum to the Senate Justice Legal and Administrative Committee recommended an amendment to Article 164 for the appellate process for all other elective offices to terminate at the Court of Appeal level for the expeditious finalization of disputes.</p>	

	NCKK memorandum to the Senate proposed the amendment of Section 6 and 10 of the IEBC Act , to vest overall responsibility of the management of the Commission to the Chair.	The recommendation has remained at the proposal stage.
	NCKK memorandum to the Senate proposed the review of the Code of Conduct for Commissioners and staff.	The recommendation has remained at the proposal stage.
	The National Dialogue Conference convened by the Dialogue Reference Group (DRG) recommended that the Independent Electoral and Boundaries Commission (IEBC) Act, 2011 be reviewed to strengthen and streamline the body's operations to: To separate boundaries review functions from the elections management and domicile it in a different body. To establish a training institute for IEBC staff knowing that most of the staff at the body are engaged on a temporary basis.	The recommendation has remained at the proposal stage.
	National Dialogue Conference convened by the Dialogue Reference Group. The applicable laws should be amended to remove Members of the National Assembly from the management of the Constituency Development Fund so that the elected representatives concentrate on their legislative and oversight mandates.	The recommendation has remained at the proposal stage.
Elections and voter education	ELOG- Invest in leaders who understand the implications for amending electoral laws especially during periods too close to elections. These leaders should be the ambassadors of good practices pertaining to electoral legal reforms.	The Public Participation No. 2 Bill, 2019 (No.71 of 2019): The principal purpose of this Bill is to give effect to Articles 10(2)(a), 69(1)(d), 118, 174(c), 184(1)(c), 196(1)(b), 201(a) and 232(1)(d) of the Constitution of Kenya regarding public participation. The Bill further seeks to establish a legal framework, the parameters for public participation and defines the obligations of state organs and public offices in conducting public participation. The Bill also seeks to enhance public participation by creating a framework for informed, effective and efficient engagement of the public in decision-making processes. The Bill was gazetted in October, 2019.
	ELOG- Strengthen public participation on the electoral legal reform agenda.	
	ELOG- Advocate for the operationalization of Section 100 of the County Government Act 2012 and partner with county governments to operationalize Section 100 of the County Government Act 2012.	

	<p>The Kenya National Commission on Human Rights (KNCHR) recommended constant review of electoral laws that adhere to international standards to be done in good time to ensure that the electorate and relevant stakeholders are familiar with electoral laws.</p>	
	<p>IEBC- The Commission in collaboration with electoral stakeholders needs to develop a framework to guide the extent of public participation in the Commission’s activities.</p>	
	<p>NCKK memorandum to the Senate suggests a need to have a legal platform to discuss and make proposals that will inform reform on the validity and invalidity of an election result.</p>	
	<p>NCKK memorandum to the Senate suggests the need to build consensus through engagement with the key stakeholders after the elections as a crucial need on buttressing electoral reform.</p>	
	<p>The National Dialogue Conference recommends that a National Ethics and Civic Education Commission (NECEC) should be established to provide education and empowerment of the citizens of Kenya on socio-political and civic matters. The Commission should be fully funded by the exchequer.</p>	
	<p>Article 85 of the BBI provides for representation in the electoral system. Whatever form reforms to representation take, that they accord to the principles of inclusivity if Kenyans are to be fairly and equally represented.</p>	<p>The validation process for the Building Bridges Initiative (BBI) Report was concluded in March, 2020.</p>
	<p>BBI- Establishment of the Office of the Public Participation Rapporteur to strengthen quality, transparency and inclusion in public participation processes required by the Constitution.</p>	
<p>Elections and media</p>	<p>KNCHR recommended that the media should observe the code of conduct on ethics and professionalism in discharging their mandate as provided for in the Constitution and the Media Act 2013.</p>	<p>The Media Council of Kenya in partnership with other stakeholders came up with the Guidelines for Election Coverage, 2017 that seeks to provide a mechanism for adherence to the Code of Conduct for the Practice of Journalism as entrenched in the Second Schedule of the Media Act, 2013.</p>

	<p>ELOG- Review laws passed by County governments against 'a free media'; identify gaps against relevant constitutional provisions and propose changes.</p>	The recommendation has remained at the proposal stage.
	<p>The Commonwealth report noted that while freedom of speech was guaranteed by the Constitution of Kenya, there was a proliferation of fake news, inflammatory online statements and propaganda that compromised. They advocated for legislation that would cover this area.</p>	The Kenya Information and Communication Amendment Bill, 2019 which seeks to amend the Kenya Information and Communication Act to provide for the regulation of use of social media platforms was gazetted in July, 2019. The new part will introduce new sections to the Act on licensing of social media platforms, sharing of information by a licensed person, creates obligations to social media users, registration of bloggers and seeks to give responsibility to the Communications Authority of Kenya (CAK) to develop a bloggers code of conduct in consultation with bloggers.
Electoral legal framework	<p>ELOG recommends that we Amend Article 140 (1 & 2) of the Constitution to increase the timeline for filing, hearing and determination of presidential election petitions to be within 30 days. This has not been implemented.</p>	The recommendation has remained at the proposal stage.
	<p>ELOG- Review the Leadership and Integrity Act to enhance legal and social vetting of candidates.</p>	<p>Lifestyle Audit Bill, 2019 seeks to curb corruption among public officers in the Judiciary and other commissions mandated to oversee the electoral process. The Bill is yet to go through the first reading.</p>
	<p>ELOG- Strengthen social and legal vetting mechanisms: the prevailing legal framework on vetting of candidates should be broadly interpreted to include social vetting.</p>	
	<p>ELOG- Pass the Lifestyle Audit Bill 2019 which describes "lifestyle audit" to mean an investigative audit of a person's living standards to ascertain consistency with a person's lawfully obtained and reported income. This will assist in curbing corruption.</p>	
	<p>ELOG- Ensure implementation and enforcement of the electoral laws through the development of a more comprehensive and coordinated legal framework.</p>	<p>The Constitution of Kenya (Amendment) Bill, 2019 (Senate Bills No. 16) proposes the amendment of Article 81 which prescribes the General principles for the electoral system through the renumbering of the existing provision as clause (1); and inserting a new clause immediately after the new clause (1)- (2). The State shall take the legislative, policy and other measures including the setting of standards, to achieve the realization of clause (1) (b). Referred to the Committee on Justice, Legal Affairs and Human Rights. The Committee Report was tabled on 21st November, 2019 and is awaiting the Second Reading.</p>

	<p>ELOG- Electoral legal reforms and amendment of election laws: Review and implementation of the Election Campaign Financing Act, 2013 Implementation of the two-thirds gender rule Develop a comprehensive legal framework on data protection Adoption of the Election Laws (Amendment) Act 2016.</p>	<p>There are proposed amendments to the Election Campaign Financing Act No. 42 of 2013 through the Election Campaign Financing (Amendment) Bill, 2018 which is currently in the drafting stage. The Bill if approved, intends to operationalize the Act.</p>
	<p>ELOG- Implement electoral campaign laws (code of conduct). The Carter Centre in its report 'Kenya 2017 General and Presidential Elections' highlighted the lack of legislation on campaign financing resulting in the creation of an uneven playing field and lack of transparency. Recommended a review of the electoral legal framework based on the gaps and inconsistencies as highlighted.</p> <p>ELOG- Amend Article 138(4) to increase the threshold for a popular mandate to more than half of all the votes cast in the election by at least fifty percent of the registered voters.</p>	<p>There are proposed amendments to the Election Campaign Financing Act No. 42 of 2013 through the Election Campaign Financing (Amendment) Bill, 2018 which is currently in the drafting stage.</p> <p>The recommendation has remained at the proposal stage.</p>
	<p>ELOG- Amend Article 88(2) to revise eligibility for appointment as IEBC Commissioner to introduce a middle ground mix approach incorporating neutral experts and at least two political party representatives.</p>	<p>Amendment to scrap the minimum requirements needed for the electoral commission chairperson. The Election Laws (Amendment) Act 2017 vis-à-vis Katiba Institute & 3 others v Attorney General & 2 others {2018} eKLR: The Elections Laws (Amendment) Act 2017 sought to amend the Elections Act, 2011, The Independent Electoral and Boundaries Commission Act 2011 and The Election Offences Act, 2016.</p> <p>The above amendments were brought in to address problems as cited by the Supreme Court while annulling the presidential elections. Due to agitation by stakeholders, the president refrained from signing them to law but the amendments became law in 2018 after the lapse of fourteen days and were published in the official gazette. However, the provisions are only interpreted in consideration to the Constitution of Kenya.</p>

		<p>Section 2 of the <i>Elections Act</i> sought to amend the definition of the Chairperson of the Commission was annulled. Section 7A and 7A (5) which deal with the filling of a vacancy in the office of chairperson were found to be unconstitutional. Sections 39 (1D) and 39(1)(F) on the transmission of election results were found to be vague and unconstitutional. Section 83 was amended to read that for an election to be annulled there must not only be a failure to comply with the Constitutional principles and election laws but also the failures must substantially affect the result of the election. The other amendments involved Section 6 and 14(2) of the <i>Election Offences Act</i>. The fine and sentence in Section 6 was enhanced while section 14(2) was deleted.</p>
	<p>ELOG- Review law on appointment of IEBC Selection Panels to reintroduce representation from the Judicial Service Commission, Law Society of Kenya, Kenya Anti-Corruption Advisory Board, Association of Professional Societies of East Africa, and religious groups).</p> <p>ELOG- Pass the Independent Electoral and Boundaries Commission (Amendment) Bill, 2019 to improve the process of appointments of the IEBC Chairperson and Commissioners by the President and the National Assembly within seven days of the declaration of a vacancy in the office of the chairperson or member of the Commission.</p>	<p>The Independent Electoral and Boundaries Commission (Amendment) Bill, 2019- First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 which seeks to improve the process of appointments of the IEBC Chairperson and the Commissioners by the President and the National Assembly by providing a mode of representation for persons nominated. It also ensures the nomination process is done within seven days of the declaration of a vacancy in the office of the chairperson or member of the Commission. The Bill went through the first reading on 2nd May, 2019.</p>
	<p>ELOG- Formulate rules to govern election appeals from the Court of Appeal to the Supreme Court.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>BBI recommends a move away from the common winner takes it all to an all-inclusive government through changes in government structure.</p> <p>BBI- Explore ways to enact provisions that reduce the disproportionately high costs of Kenyan elections for example the party-list system.</p>	<p>The Building Bridges Initiative (BBI) policy document has undergone public participation and validation.</p>
	<p>The KNCHR recommended that Parliament ensures constant review of electoral laws that adhere to international standards.</p>	<p>The recommendation has remained at the proposal stage.</p>

	<p>NCKK memorandum to the Senate on electoral reforms proposed the drafting of Boundaries Delimitation Regulations to give the amended Election Act legal effect. Implement a statutory framework to implement Article 89 of the Constitution.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>IEBC- Legal reforms and amendments of electoral laws should be carried out at least two years to the election to allow adequate time for implementation.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>IEBC- Extend the deadline for the determination of post-election presidential petitions and implement the suspended Election Campaign Financing Act, 2013.</p>	<p>There are proposed amendments to the Election Campaign Financing Act No. 42 of 2013 through the <i>Election Campaign Financing (Amendment) Bill, 2018</i> which is currently in the drafting stage.</p>
	<p>IEBC- Parliament to consider amendment of the law to provide for staggering of elections for example, different dates for county and national elections.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>IEBC- Re-align the term of the County Assembly with that of the other elective seats.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>IEBC suggested the need to legislate the decisions by the Courts and develop the requisite rules and regulations for implementation.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>IEBC- Review of timelines under the Election Campaign Financing Act, 2013 to align with the Elections Act, 2011 timelines.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>IEBC- Review of the Election Campaign Financing Act, 2013 to address ambiguities, inconsistencies and flaws.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>IEBC- Publication of the Election Campaign Financing Regulations to effectively operationalize the Act.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>IEBC- Review of the provisions of Section 29 of the Elections Act, which was considered unconstitutional by the High Court decision in; Council of Governors vs. Inspector General, National Police Service & 3 others (2015).</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>IEBC- Review of Section 319(2) (D) to enhance the regulation of the mode and conduct of party primaries and the attendant responsibility on the Commission to oversee this process.</p>	<p>The recommendation has remained at the proposal stage.</p>

	IEBC- Review of laws to provide that persons intending to contest in party primaries to be nominated as candidates for elections must also be members of the nominating parties at the time of submission of membership lists to the Commission.	The recommendation has remained at the proposal stage.
	IEBC- Review of the timeline for submission and review of party lists to provide for additional time for review of re-submitted lists following resolution of disputes.	The recommendation has remained at the proposal stage.
	IEBC- Review of Section 34(6A) to provide for further vetting of lists after publication where disputes have been heard and decisions issued that alter the party list.	The recommendation has remained at the proposal stage.
	IEBC- Review of Regulation 54(8) of the Elections General Regulations to provide delineation between publication of the first list and the second list after the dispute resolution processes.	The recommendation has remained at the proposal stage.
	IEBC- Review of processes post-dispute resolution to provide for a mechanism and period of reviewing lists to ensure compliance with court orders without re-opening a series of disputes by aggrieved persons noting that party-list processes are required to be completed before the date of the general elections.	The recommendation has remained at the proposal stage.
	IEBC- Legislative reform agenda that seeks to subject the Hare Quota principle to public scrutiny and have it legislated in the interest of transparency in the Commission's processes.	The recommendation has remained at the proposal stage.
	IEBC- Review the law on the mandate of the Commission to address errors in Gazettement of nominees on allocated seats by way of corrigendum against positions taken by the court that upon Gazettement allocation is complete and Commission is functus officio (<i>Constitutional Petition No 456 Of 2017 Rahma Issak Ibrahim v Independent Electoral & Boundary Commission & 2 others [2017] Eklr.</i>)	The recommendation has remained at the proposal stage.
	IEBC- Review of the law to address existing ambiguities, flaws and inconsistencies in the selection of nominees from party lists and allocation of special seats at the County Assemblies.	The recommendation has remained at the proposal stage.

	IEBC- Implementation of the draft regulations to operationalize the Election Campaign Financing Act, 2013 to operationalize the Election Campaign Financing Act, 2013.	The recommendation has remained at the proposal stage.
	The National Dialogue Conference (NDC) convened by the Dialogue Reference Group (DRG) recommended that an Audit of the implementation of the Constitution be undertaken. The National Assembly should enact the law to facilitate this within six (6) months.	The recommendation has remained at the proposal stage.
	NDC- Initiate constitutional reforms to dignify the opposition by enabling the runners up in the Presidential election to serve as the Leader of Official Opposition in the National Assembly while the running mate becomes the Leader of Official Opposition in the Senate. The offices of the leader of official opposition should be adequately facilitated to perform oversight over the national government.	The recommendation has remained at the proposal stage.
	NDC- Amend the constitution to provide that the runners up in the gubernatorial polls are facilitated to assume the position of Leader of Official Opposition in the counties with adequate resources to oversee the County governments. This facilitation should include a secretariat and advisors.	The recommendation has remained at the proposal stage.
	NDC- Constitutional Commissions should be strengthened to enhance good governance.	The recommendation has remained at the proposal stage.
	NDC- Operationalization of the Public Benefit Organizations Act 2013 should commence immediately to ensure that non-governmental organizations thrive and are accountable in their operations in a bid to expand the civic and democratic space in the country.	The recommendation has remained at the proposal stage.
	NDC- The Dialogue Reference Group will establish a Human Rights Advisory Board comprised of religious leaders with a mandate to recommend steps to secure judicial independence, effectiveness of Constitutional Commissions and Independent Offices, and the faithful implementation of the Constitution of Kenya.	The recommendation has remained at the proposal stage.

Elections and electoral technology	<p>ELOG- Employ electronic system in elections: Open data election for the purposes of transparency, accountability and allow access to information on the elections.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>ELOG- Review technology provisions in all election laws for example, Election Laws (Amendment Act) 2016.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>ELOG- Pass the Huduma Bill 2019 which provides for the structure of the NIIMS database and an in-depth procedure on the collection and also maintains access to data. It sets out punitive measures in case of breach and sets out obligations, accountability and scope of data protection.</p>	<p>Huduma Bill, 2019 which will streamline and promote efficiency in the delivery of public services and consolidate the law on registration of persons. The Bill is in Cabinet and public participation to the regulations was done in February, 2020. The Bill is awaiting adoption in Parliament.</p>
	<p>ELOG- Develop Open Elections Data policy.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>ELOG- Advocate for the implementation of a comprehensive legal framework for data protection for example, Elections (Technology) Regulations, 2017.</p>	<p>Enactment of the Data Protection Act 2019. Implementation of the Data Protection Act 2019 which will be operationalized through regulations which went through public participation in February, 2020. This legislation provides for handling of data, transmission of data, security features and punitive measures all in accordance with General Data Protection Regulations (GDRP) 2016/679. The Act is not yet operational because a Data Commissioner is yet to be appointed but the position has been advertised. The regulations are waiting to be published and soon after to be tabled in Parliament for adoption. The Computer Misuse and Cybercrimes Act 2018 has since been enacted and deemed constitutional in a recent High Court Judgment dated February 20, 2020.</p>
	<p>European Union Election Observation Mission (EU EOM) recommended that the IEBC be bound to the constitutional requirement of having the electoral system be simple, accurate, verifiable, secure, accountable and transparent.</p>	<p>The recommendation has remained at the proposal stage.</p>
	<p>EU EOM- transparent procedures for counting, tallying and results transmission processes, improved results transmission software and network selection provision, timely updates on the IEBC website to allow time for checking and preparation of possible petitions.</p>	<p>The recommendation has remained at the proposal stage.</p>

RECOMMENDATIONS

A. CRITICAL MINIMUM LEGAL REFORMS AREAS BASED ON THE ELOG-TWG THEMATIC AREAS

1. Full Implementation of the two-third gender rule as per the requirements of Article 81(b) of the Constitution of Kenya and the Election Campaign Financing Act, No.42 of 2013 as stated in Section 32 of the Election Laws (Amendment) Act, No.1 of 2017.
2. Voter's Registration
 - Mandatory Audit of the register of voters for the 2022 general elections.
 - Harmonization of civil registry
3. Enforcement of electoral crimes and offences laws as captured in the Election Offences Act, No. 37 of 2016.
4. Safeguarding of an independent and expert commission with;
 - Apolitical appointment and replacement process
 - Staggered appointment of the Commissioners
 - Expert commission retained
 - Establishment of IEBC Fund to be drawn from the public coffers
 - Regular vetting of personnel including temporary staff
5. Prohibition of change of election laws at least six months to an election or in the alternative, laws changed six months to the election to apply only to the subsequent election.
6. Passing of the Representation of the Special Interest Group (Amendment) Bill, 2019 to operationalization of Article 100 of the Constitution for the representation of Special Interest group
7. Addressing concurrent/multiple jurisdictions of electoral disputes and devolve PPDT processes to the counties.
8. Audit of the Kenyan Electoral System to embrace a robust PR system of representation.
9. Robust management of political parties processes through:
 - Regulation of internal elections/ nomination processes by ORPP;
 - Improved EDR processes/alternative EDR mechanisms;
 - Review of public funding criteria to establish a threshold for all registered parties; and
 - Legislation of Political Party Nomination law to provide clear guidelines to the nomination process.

B. KEY INTERVENTIONS AND STRATEGIES TO BE ADOPTED FOR THE REALISATION OF THE RECOMMENDATIONS TO THE ELECTORAL REFORMS

- Urgent lobbying for electoral reforms by members of the COS Technical Working Group (TWG).
- Robust and frequent engagement of key stakeholders involved in the electoral reform process.
- Frequent stakeholder discussion workshops to develop a collective voice and/or opinion on electoral reforms.
- Multi-sectoral and targeted approach to electoral reforms.
- Re-building of public confidence through frequent public sensitization forums and strategic communications by key electoral actors.
- Engaging with Information and Communications Technology (ICT) experts and adherence to the Data Protection Act 2019.



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3. The Independent Electoral and Boundaries Commission Act (No. 9 of 2011)
4. Political Parties Act (No. 11 of 2011)
5. The Finance Act, 2018
6. The Political Parties (Registration) Regulations, 2019
7. The Political Parties (Funding) Regulations, 2019

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2. Universal Declaration on Human Rights (UDHR)
3. International Covenant on Civil and Political Rights (ICCPR)
4. Convention on the Elimination of All Forms of Discrimination against Women
5. UN Convention on the Rights of Persons with Disabilities, 2006
6. Beijing Declaration and Platform for Action (BPFA)

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3. African Charter on Democracy, Elections and Governance, 2007

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APPENDICES

Appendix 1 Meeting with the Independent Electoral and Boundaries Commission (IEBC)



ELOGs Steering Committee meeting with the Independent Electoral and Boundaries Commission (IEBC) Chairperson, Wafula Chebukati; Commissioner Molu Boya, Ag CEO H. Marjan and other members of the Secretariat to explore ways of building synergy and cooperation in electoral reforms areas.

Appendix 2 Meeting with the Political Parties Dispute Tribunal (PPDT) and the Office of the Registrar of Political Parties (ORPP)



ELOG held an inception meeting with the Political Parties Dispute Tribunal (PPDT) to discuss areas of synergy and collaboration towards championing for electoral reforms.



ELOG held an inception meeting with the Office of the Registrar of Political Parties (ORPP) to discuss areas of synergy and collaboration towards championing for electoral reforms.

Appendix 3: ELOG WEBINAR MEETING WITH THE DUTY BEARERS'

ELOG hosted a webinar dubbed "Kenya's Reforms Scorecard Ahead Of the 2022 General Elections" to assess and take stock of electoral reforms currently taking place in the country as well as the state of electoral preparedness ahead of the 2022 elections.



The panelists from the top far-left included Ms. Ann Nderitu (ORPP), Ms. Regina Opondo (ELOGs Chair), Faith Njahira (Disability Inclusion advocate), Mss. Nerima Wako (Siasa Place), Mr. Felix Oduor (ELGIA Executive Director), Ms. Lilian Mahiri-Zaja (Election Expert), Ms. Desma Nungo (PPDT Chair), the Independent Electoral and Boundaries Commission (IEBC) Commissioner, Prof Abdi Guliye and Grace Kimani (Sign Language Interpreter).



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