



**REPORT ON TRACKING THE GENDER RESPONSIVENESS
OF INTRA-PARTY DISPUTE RESOLUTION MECHANISMS
ARISING FROM THE PARTY PRIMARIES**

Commissioned by

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Part 1: Introduction and Context

1.1 Background – including the rationale and justification of the undertakings

The study on tracking political parties' primary elections disputes with regard to gender responsiveness is part of a project being implemented by the CMD-Kenya in partnership with the UN Women under the Strengthening Electoral Processes in Kenya (SEPK) which seeks to increase the levels of women representation in County and National Assemblies during the August 2017 General Elections.

Parties that were targeted and approached in this project as per the directions by the CMD-Kenya were Orange Democratic Movement – ODM, KANU, Wiper Democratic Movement, Jubilee Party, FORD Kenya, Amani National Congress -ANC, NARC-Kenya and NARC.

These parties are the leading political organizations in the number of membership and candidates that were cleared for participating in their respective primary elections. Jubilee Party and ODM conducted primaries singly in almost all electoral zones from county level through constituencies and ward levels

Political parties are membership organizations whose principal objective is to form governments either singly or in coalitions upon being elected or being re-elected during general elections after holding their respective primary elections in line with their respective party constitutions and nominations guidelines which also proscribe gender compliance and procedures of filing and determining disputes arising from the conduct and results of the primary elections.

Parties were also expected to adhere to the provisions of the “Political Parties’ Strategy on Gender Equality in Candidates’ Nomination in Kenya”, a tool they developed in 2016 to guide the process.

Primary elections were held in April 2017 by political parties in electoral zones where more than one candidate were cleared by their respective elections boards.

No party held presidential primary elections for sole candidates were declared unopposed during delegates conferences.

For aspiring for other posts, members of political parties contested for primaries at county level (gubernatorial, senatorial and women representative) constituency (members of national assembly) and wards (members of county assemblies)

Not all primary elections aspirants and party members were satisfied with results of primary elections in some of the afore-mentioned parties across the country.

There were numerous complaints resulting in disputes filed with appeals tribunals of the party by candidates especially in electoral zones that are strongholds of the Jubilee Party in Mount Kenya and Rift Valley regions and the Orange Democratic Movement in Nyanza region.

Some of the aggrieved aspirants countrywide were able to express their grievances during press conferences. Demonstrations and incidents of violence over primary elections results and the manner in which the primaries were organized were covered by the media.

Some parties, leading one being Jubilee Party ordered repeats of the primary elections in multiple counties, constituencies and wards after cancelling results of earlier primaries.

With the above occurrences, and there being requirement to comply with the gender rule, the study is done to assess the gender responsiveness to settling disputes arising during the course and declaration of the results of the primary elections.

The study was to last from 28th April 2017 to 28th May 2017. Extension was done to give way to parties to compile, consolidate, summarize and finalize their reports and then meet their appeals tribunals.

1.2 Context

Unlike during the past elections, there was overwhelming turn out of members across the political parties, mainly Jubilee Party, ODM, Amani National Congress, Ford-Kenya, Wiper Democratic Party to participate as voters and aspirants in the primaries conducted by their respective party's electoral boards.

Disputes arose right from the start of clearing aspirants, mainly characterized with resistance to clear women and instead being offered to contest to aspire for offices of women representatives and/or wait to be nominated to the senate, national and county assemblies. Women aspirants contested.

Some of those who won had disputes filed against them, mostly by men aspirants, while some women aspirants filed against disputes against their male opponents who had clinched their respective party nominations.

This was the first time primary elections disputes were being filed and heard by appeals tribunals in compliance with the Political Parties Act and parties' constitutions and nominations guidelines already filed with the Registrar of Political Parties and the Independent Electoral and Boundaries Commission.

This was also the first time the Political Parties Disputes Tribunal (PPDT) is hearing and determining appeals filed by aspirants against verdicts made by appeals tribunals of political parties.

1.3 Objectives

- a. To assess the gender responsiveness of dispute resolution within political parties with regard to increasing the levels of women representation in the County and the National Assemblies during the upcoming General Elections to be held on Tuesday, 8th August, 2017
- b. To assess the gender responsiveness of determination of cases before the Political Parties Disputes Tribunal for arbitration and determination
- c. To document experiences of selected women candidates subjected to the dispute resolution processes

- d. To make recommendations on how political parties can strengthen their dispute resolution mechanisms in future especially as soon as possible before holding the first by-elections that may arise immediately after holding the upcoming General Elections to be held on Tuesday, 8th August, 2017

Part 2: Assessment Methodology

Parties were contacted through phones for appointments for holding meetings on how disputes were determined after being filed by the candidates, both women and men, in their respective appeals tribunal, against results of primary elections declared by their respective national elections boards of their parties.

During appointments, officials of parties appeals tribunals were to be interviewed and their answers would constitute information on nature and settlements of disputes by replying to questions in the information questionnaire, specifically focusing on disputes file by women aspirants and those filed against women aspirants.

Officials of the Political Parties' Dispute Tribunal were to be interviewed to establish the gender responsiveness of the cases before them for arbitration.

Selected women candidates subjected to the dispute resolution processes were interviewed for documentation of their experiences

Part 3: Results and Discussion

3.1 Nature of dispute resolution mechanisms

Upon disagreeing with the results of the primary elections declared by national electoral boards of the political parties, candidates filed disputes with the respective parties' appeals tribunals. Some parties charged filing fees. Jubilee Party charged Ksh.1,000 to all candidates filing disputes regardless of their gender.

Respondents and electoral boards received summons. During hearings, both sides with their witnesses were heard, evidence submitted and determination made either in the favour of the candidate, or the respondents.

If it was in the favour of the candidate, the candidate would be declared winner or their would be ruled repeat primaries in the respective electoral zone. If the respondent won, that was upholding the results declared by the party's electoral board.

If one of them was not satisfied, then would file appeal at the PPDT, and yet if not satisfied, would file another appeal in the High Court.

The primary electoral offenses alleged, among others included the manner in which the primaries were organized, relocating polling stations without adequate notice to party members, rigging through allowing multiple voting, importing party to vote in electoral zones that is not theirs, incidents of violence, using non official ballot papers, conduct of primary elections officers, unjust determination and declaration of results, destroying used ballots that could have been used as evidence, introducing pre-marked ballots papers before, during and after voting but before counting.

3.2 Gender responsiveness of Dispute Resolution mechanisms

a. NARC – K Report

Primary elections were held in this political organization in adherence to its constitution and nominations regulations.

300 women aspirants contested dual gender offices but none of them filed any disputes, nor was dispute filed by any female nor any male aspirants against female aspirants who won in the primaries.

Breakdown of the results not provided, though requested.

b. NARC Report

The party carried out it's primaries in accordance with the relevant provisions of its constitution and the nominations rules

There were no disputes. Out of 124 female aspirants for MCA offices, 2 were elected in Kitui, 2 in Makeni, and 1 in Machakos, out of 5 female aspirants for National Assembly, 2 were elected, 1 for Kathiani and another for Makeni.

The party did not provide for number of male aspirants who won it's primaries.

c. ANC Report

According to the party, its primaries were conducted by designated primary electoral officials and disputes heard appeals tribunal in line with its constitution and nomination guidelines.

The party answered most of the questions in the questionnaire tool. It did not provide breakdown it's primary elections results.

There were four disputes filed against women aspirants who won the MCA primaries and one against Women Representative Primary. One appeal for MCA was allowed was allowed, and for Women Representative was also allowed.

11, 2, and 2 losing female aspirants respectively filed disputes for MCA, MP and Women Representatives primary races.

The Appeals Tribunal ordered 1 and 3 repeats for MP offices and MCA respectively

For MCAs disputes, ANC reported that grounds given by complainants include:

- Multiple voting by individual voters
- Deliberate presentation of wrong results
- Delays in opening polling stations
- Declaring women aspirants as losers disregarding they had won as determined during counting

The party said both male and female aspirants filed identical complaints and were heard and determined equally as per evidence and submissions tendered.

d. FORD – Kenya

The party stated that it conducted its primaries and its appeals tribune heard disputes in line with its constitution and nomination guidelines.

Twelve female aspirants filed disputes against the primary elections results of MCAs races. Whereas the party reports there are 65 disputes filed male MCAs aspirants, there are no details about how many of them have filed against winning female aspirants. Still the party has not given details requested through the questionnaire tool.

There are two disputes by female aspirants against the female aspirants who won the Women Representative races.

There were no disputes filed for MPs primary elections results by any female aspirants but it's not indicated if any male aspirants is disputing primary elections results of a winning female aspirants.

The party stated disputes by female aspirants against other aspirants were heard over same complaints filed by male aspirants against their fellow male aspirants, and determined on merit as evidence tendered and submissions.

e. Jubilee Party

The party had 114 female aspirants elected during the MCAs primaries and 25 female aspirants elected for MPs while 1270 MCA males and 253 MP males were elected in other wards and constituencies some of females contested.

There are four and five females who won for gubernatorial and senatorial respectively while there are 42 males and 41 males for gubernatorial and senatorial respectively

The party has 47 women representative candidates.

Among the 114 elected female aspirants, 22 were challenged and won in the disputes filed in the party's Appeals Tribunal against respective primary elections results declared by the party's National Elections Board.

There were 40 female aspirants who lost in the primaries, filed dispute in the tribunal and lost.

Out of the 25 elected female MPs aspirants, 4 were challenged at the tribunal and won.

Disputes against winning male aspirants were filed by 15 losing female MPs aspirants.

One female aspirants who had lost in the primaries filed an appeal and won.

There were four aspirants who filed against women representative aspirants but lost.

The party tribunal states that there were grounds of multiple voting by individual voters, delays in opening stations, and relocating polling stations from agreed venues without adequate notice. The grounds were tabled by disputants regardless of their gender.

For Ground 9, it's only in one ward where a women aspirant was declared a loser while she had won as determined during counting. The tribunal said this also happened to other male aspirant against male aspirants, declared losers while they won during counting.

The tribunal also said there were complaints over voter bribery, names missing in party's voters register, and unbecoming conduct of presiding and returning officers.

The tribunal said complaints filed by male aspirants against male and female aspirants were the same as those filed by female aspirants against male and female aspirants and therefore disputes were settled on their own merit regardless of gender of the aspirants in the dispute.

The party acted only gender responsively by charging female aspirants lower nominations fees than male aspirants.

3.3 Experiences from the Political Parties' Dispute Tribunal (PPDT)

As per the Tribunal's summary report dated June 22, 2017, forty disputes were filed by female aspirants out of the total three hundred at the PPDT.

The rest of the summary lists data but no breakdown on gender basis, among them 155 and 72 cases filed respectively by the ODM and Jubilee aspirants.

According to a tribunal official, the disputes by female aspirants were the same as those of men and were heard and determined on their own merit as per evidences tendered and justifications made.

3.4 Experiences of selected women candidates subjected to the dispute resolution processes

The following female aspirants of primary elections were interviewed over their experiences in the primaries and filing disputes seeking annulment of results declared by their respective parties electoral boards.

1. PASILITA ANYANGA – ANC FEMALE ASPIRANT FOR MCA RACE – NGEI WARD, MATHARE CONSTITUENCY, NAIROBI COUNTY.

She said her opponent, a male, who won had printed membership cards which he distributed to voters.

Upon complaining to the party, the opponent was warned. Together with his followers he threatened her with physical violence.

After polling, counting was not done in the two designated polling stations, according to her.

She added the primary electoral officers in both stations together with the opponents ran away with the marked ballots to Milimani where they entered a compound.

She followed them but was not allowed in the compound.

The opponent was declared winner. She filed her appeal but lost.

She is running the same seat as an independent candidate.

2. ELIZABETH MUDIKIZA – FORD – K FEMALE ASPIRANT FOR MCA RACE – TAMBUA WARD, HAMISI CONSTITUENCY, VIHIGA COUNTY

She complained of delays in opening polling stations despite voters turning up early. Some of her supporters became impatient and went out of the polling station. Other supporters followed them later after being threatened with violence by one of her opponents.

After polling, ballots were transported to designated counting center, but the returning officer refused to have the counting process done due to tense atmosphere and fears of possible outbreak of violence.

Counting was eventually done, but she was not satisfied with the results. She filed a dispute, but lost.

Though now campaigning for the same seat as an independent, she receives threatening messages through social media insisting if she does not withdraw from the race, she will not win and that the electoral zone will never be led by a woman.

She fears for her life even if she wins.

3. PHYLIS MARANGA – JUBILEE PARTY FEMALE ASPIRANT FOR MP - MATHIRA CONSTITUENCY, NYERI COUNTY

She claimed her opponent who won engaged together with his lead campaigners in illegalities that included massive voter bribery, well coordinated multiple voting by his followers who were transported to multiple polling stations to cast ballots and relocating polling stations without adequate notice to voters.

During opening in some polling stations, boxes stuffed with marked ballots in favor of the opponent.

Upon complaining, she with her agents were threatened with violence.

She disputed the results that were declared but lost.

Now she is in the parliamentary race as an independent candidate.

3.5 Challenges and Opportunities

1. Challenges

- a. The study had to be extended because it was very hard to access political parties. Members of appeals tribunals of political parties are not full time employees of political parties and were the ones with information on disputes they settled.

Parties that responded include NARC, NARC- Kenya, ANC, FORD-Kenya and Jubilee Party, after more than a month as they were claiming to be compiling their respective reports.

Other parties promised to respond but did not fulfill their commitments. Upon visiting their party offices numerously, the relevant officials who could give contacts of members of appeals tribunal were not available, nor were there reports left by them for collection.

Numerous calls to them (KANU, Wiper) were answered and promises made for setting days for appointment and filling the information questionnaire but were not fulfilled by the two parties.

- b. A party (ODM) refusing to share its information on disputes as it regards it to be confidential. There be hope that this party will reconsider its position and that no other party will reject sharing

information on disputes in future since information is for sharing experiences and learning from them.

- c. The short duration of carrying out the exercise
- d. Records of names not listed with identifications of gender by some parties.

2. Opportunities

- a. There be conducted information sharing forum attended by representatives of appeals tribunals and PPDT to learn the report of this study, share experiences and identify best practices of dispute resolution mechanism including devolving the mechanism to the counties, and PPDT devolving to former provincial zones with the former Rift Valley have two PPDT chambers
- b. There is need to conduct intensive and extensive studies on effectiveness and efficiencies of the political parties' appeals tribunal and the PPDT so as to further identify best practices to build on and challenges to address, before the holding of primaries of by elections that may arise after the upcoming General Elections and the primaries preceding the 2022 General Elections
- c. There be conducted study of the causes of disputes and party electoral boards and its electoral officers be empowered to institute preventing measures against occurrences of disputes through conducting credible, free, fair and gender responsive primary elections

Part 4: Summary, Conclusion and Recommendations

4.1: Summary

Disputes were filed by both female and male aspirants, majority by the latter. The parties stated they adhered to their respective party constitution and nomination guidelines. They said complaints but not limited to rigging, violence and other irregularities by both male and female aspirants were the same and that none of them required gender responsive determination apart from passing verdicts through evidence tendered after giving both the plaintiffs and respondents adequate time to state their sides of the disputes.

The above three aspirants' experiences of suffering during the party primaries are representative of the hundreds of experiences of hundreds of female aspirants who ran to win their respective party tickets for the upcoming General Elections to be held on Tuesday, August 8, 2017.

The three aspirants still feel they suffered during the primaries because of their gender and did not receive their due gender responsive treatments and verdicts. They claimed they were not given adequate time to prosecute their respective cases by their respective parties' appeals tribunals.

There are some other female aspirants who felt they had lost unfairly but did not file dispute because they did not trust their respective party appeals tribunals due to what they suspected as pre determined choice of candidates to be issued with nomination certificates, conspiracies between members of parties' electoral boards and appeals tribunals.

Even most of the female aspirants who won the primaries suffered threats of violence and were subjected to acts of thwarting them to win.

4.2 Conclusion

Primary elections were not well conducted. There were complaints arising out of gender mistreatment and were not given their due gender responsiveness. Appeals tribunals of political parties did not determine the disputes to the satisfaction of both complainants and defendants, and therefore both sides filed cases at the PPDT against verdicts delivered by the party appeals tribunals.

4.3 Recommendations

1. Future parties' primary elections be conducted by credible external body with powers to disqualify aspirants engaging in irregularities and being behind outbreak of violence during the primaries.

An external body can be the regulator, and in this case, the Registrar of Political Parties to be conducting both primary elections and structural elections (ward, sub-branch, branch, national), just like the Registrars of Trade Unions, Cooperatives and Companies as per the appropriate statutes for each Registrar.

Disputes be filed with the PPDT and appeals with the High Court.

If this is done, then party electoral boards and appeals tribunals be done away with. There are no such structures in Trade Unions, Cooperatives and Companies

Therefore amendments to the Political Parties Act and political parties' constitutions and nomination guidelines have to be made.

2. There be adequate time set under the Elections Act for hearing and determining disputes. Appeals tribunals hurriedly conducted cases to beat the IEBC deadlines
3. The Appeals Tribunals and the PPDT be devolved to regions eg former provinces for expedite determination of disputes

4. Party electoral boards and appeals tribunals be empowered with gender sensitivity and responsive skills for applying during their respective functions
5. There be streamlined system of recruiting members by party recruiters with no interest in running for elective offices during general elections and by-elections. Credible, reliable and up to date party registers be in place during primaries and structural elections.

The party leadership and regulator should involve members to verify their particulars before the primary and structural elections,

6. There be enhanced institutional and organizational framework among political parties for cohesive and conducive atmosphere enabling women to run for elective offices during general elections, and elections in party organs from grassroots through sub-branch and branch, to the national levels.

This be done through continuous training and empowerment of party leadership, professional and administrative staff with emphasis on enhancing women political participation and instilling gender responsive dispute resolution mechanism

Appendices

1. Data Collection tool

CENTRE FOR MULTI-PARTY DEMOCRACY – KENYA: REQUEST FOR INFORMATION ON THE GENDER RESPONSIVENESS OF INTRA-PARTY RESOLUTION MECHANISMS ARISING FROM THE PARTY PRIMARIES, 2017.

NAME OF THE POLITICAL PARTY _____

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TABLE ONE: THE 2017 PRIMARY ELECTIONS RESULTS

	CANDIDATES ON GENDER BASIS	MCA's	MPs	WOMEN REPs	SENATORS	GOVERNORS
1.	WOMEN					
2.	MEN					

TABLE TWO: INFORMATION on NUMBER of DISPUTES

	Information	MCA	MP	Women Rep	Senator	Governor
1.	Total Number of Disputes filed with the Party Appeals Tribunal					
2.	Number of Disputes filed against Women Aspirants who WON in the primaries					
3.	Number of Disputes filed by Women Aspirants who LOST in the primaries					
4.	Number of Disputes by Women Aspirants AGAINST Women Aspirants who won					
5.	Number of verdicts upholding results declared by the Party Electoral Board for Women aspirants who won					
6.	Number of verdicts ordering repeat of primary election against Women Aspirants who won					
7.	Number of verdicts ordering repeat of primary election upon disputes filed by Women Aspirants who lost					
8.	Number of appeal cases filed by Women Aspirants with the Political Parties Disputes Tribunal					
9.	Number of appeal cases filed against winning Women Aspirants with the Political Parties Disputes Tribunal					
10.	Number of cases filed in the High Court against Women Aspirants who won in the primaries, Party Appeals Tribunal, Political Parties Disputes Tribunal					

TABLE THREE: INFORMATION ON GROUNDS GIVEN BY COMPLAINANTS FILING DISPUTES OVER THE PRIMARY ELECTIONS RESULTS

Please add grounds that are not included, and tick under each elective office as appropriate.

	GROUNDS GIVEN BY COMPLAINANTS FILING DISPUTES	MCA's	MPs	WOMEN REPs
1.	Gender based violent incidents against Women Aspirants			
2.	Imported voters			
3.	Multiple voting by individual voters			
4.	Deliberate presentation of wrong results			
5.	Denial of Women Aspirants agents to watch over polling and counting processes			
6.	Non inclusion of women aspirant name in ballot papers			

7.	Delays in opening polling stations			
8.	Relocating polling stations from agreed venues without adequate notice			
9.	Declaring Women Aspirant as a loser while she had won as determined during counting			
10.	Pre-marked ballot papers stuffed in ballot boxes			
11.	Burning ballot papers, equipment for exhibits			
12.				
13.				
14.				
15.				
16.				
17.				
18.				
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21.				
22.				
23.				
24.				
25.				

2. TABLE FOUR: MOBILE PHONE CONTACTS OF WOMEN ASPIRANTS IN DISPUTES OVER PRIMARY ELECTIONS RESULTS DISPUTES FOR INTERVIEW ON THEIR EXPERIENCES DURING THE PRIMARY ELECTIONS AND PROCESSES OF SETTLING THE DISPUTES. INCLUDE WINNERS WHO WERE CHALLENGED AND LOSERS WHO FILED DISPUTES

	NAME OF WOMEN ASPIRANT IN THE PARTY PRIMARY ELECTIONS, 2017.	MOBILE PHONE CONTACT	POST CONTESTED	WON AND DISPUTES FILED AGAINST BY OPPONENT	LOST AND FILED A DISPUTE AGAINST THE DECLARED WINNER	ELECTORAL ZONE..Ward, Constituency, County	COUNTY
1.							
2.							
3.							
4.							

2. List of Interviewees

- a. Party officials that include Executive Directors of NARC, NARC-K, ANC, FORD- Kenya and the Chairperson of the Jubilee Party Appeals Tribunal. Women league leaders were not available for interview despite attempts to reach them but the party officials interviewed said they could have given the same information if interviewed.
- b. An official of the Political Parties Dispute Tribunal
- c. Three selected women candidates subjected to the disputes resolution process