

## NATIONAL GENDER AND EQUALITY COMMISSION

### **Kutetea Usawa Wa Jinsia Na Haki Za Waliobaguliwa Na Kupuuzwa ADVISORY IN THE RUN UP TO POLITICAL PARTIES NOMINATIONS EXERCISE AND DURING THE FORTHCOMING MARCH 4, 2013 GENERAL ELECTIONS**

#### BACKGROUND INFORMATION

The National Gender and Equality Commission (NGEC) is a constitutional Commission established pursuant to Article 59(4) and (5) of the Constitution of Kenya 2010 and the NGEC Act, 2011 to promote gender equality and freedom from all forms of discrimination. Our target groups are; women, persons with disabilities, the youth, children and minorities and marginalized groups.

#### FUNDAMENTAL RIGHTS AND FREEDOMS PROTECTED BY THE CONSTITUTION 2010

The Constitution of Kenya provides for the equality of all persons and the full enjoyment of all rights and fundamental freedoms, including equal participation in the upcoming general elections. Article 21(3) provides that all state organs and all public officers have the duty to address the needs of vulnerable within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities and members of particular ethnic religious or cultural communities.

Article 27 (1) further provides for the equality of all persons and the right of everyone to be accorded equal protection and equal benefit of the law. The state is prohibited from discriminating against women, persons with *disabilities*, the youth, *older members of society* and marginalized. Likewise other persons are prohibited from discrimination directly or indirectly on all grounds contemplated in clause 27(4)- Article 27(4) &(5).

Persons with disabilities are protected by the Constitution under Article 54 of the Constitution which specifically highlights the rights accorded to men and women with disabilities to be treated with dignity, have adequate access to information, materials and facilities and be accorded the right to use sign language and Braille.

Article 55-57 of the Constitution mandates the state to take measures including affirmative action to ensure the youth, minorities, marginalized groups and older members of the society fully participate in affairs of the society including the electoral process. We are well aware that the legislation to promote representation of the marginalized groups specifically women, persons with disabilities, youth, and other minorities and marginalised communities as per article 100 of the Constitution has not been enacted. However we shall draw your attention to very clear provisions compelling political parties to include these categories in the forth coming elections.

Article 90 provides for the allocation of party lists of special seats reserved for women, persons with *disabilities*, youth, workers and marginalized groups. The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections of these seats. However to date we have not seen any guidance and or direction from IEBC on how political parties will proceed during the nomination. It is not clear whether IEBC will supervise the nomination processes by political parties. Nevertheless, we trust that the equality principle which is a key governance principle as per article 10 of the constitution will be the guiding factor for all political parties.

#### ELECTORAL LAWS ON VULNERABLE GROUPS

In light of the impending political party nominations, the NGEC wishes to draw the attention of all the political parties participating in the nomination exercise and the Independent Electoral and Boundaries Commission (IEBC) to the mandatory adherence to the principles of equality as enshrined in the Constitution.

There are various laws that govern the conduct of the electoral process in Kenya. The Elections Act, 2011 under Sections 34-

36 provides for how nomination and allocation of party lists of these special seats should be conducted.

Party list nominations for the National Assembly shall include 12 members nominated by political parties according to their proportion of members in the National Assembly. This is to allow representation of special interest including the youth, persons with disabilities and workers in accordance to Article 97 1(c) of the Constitution.

Party list nominations in the Senate shall include 16 women who shall be nominated by political parties according to their proportion of members in the Senate as per Article 98. The article further provides for 2 members (male and female) to represent the youth and another 2 slots (male and female) to represent persons with *disabilities*.

Party list nominations in the County Assembly shall include the number of special seats necessary to ensure that no more than two thirds of the membership of the assembly is of the same gender, 8 special seats at least 2 of whom shall represent persons with disability, 2 youth and 2 representing marginalized groups Article 177 (1) (b) (d) of the Constitution. Political parties and Coalitions are governed by the Political Parties Act, 2011 and are bound by the Code of Conduct set out under the first schedule of the Act. This Code of Conduct obligates every political party to uphold the principles of gender equity and equality, fairness and respect the rights of all to participate in the political process.

#### PARTY NOMINATIONS EXERCISE

The National Gender and Equality Commission calls upon the Political parties, Independent Electoral and Boundaries Commission and Registrar of Political Parties to ensure that these provisions are strictly adhered to in the party nominations, during the campaign process and in the upcoming general elections.

With regard to the nomination fees, The Elections Regulations of 2012 have stipulated the nomination fees that women, persons with *disabilities* and youth candidates vying for elective positions have to pay to IEBC as follows;

- 100,000 for a presidential seat;
- 25, 000 for a seat in the Senate;
- 25,000 for a seat as a County Governor;
- 10,000 for a seat in the National Assembly; and
- 2,500 for a seat in the County Assembly.

Each political party has their own nomination rules and in the spirit of affirmative action the National Gender and Equality Commission wishes to laud the parties that have waived their nomination fees for the vulnerable groups and urge those who have not to extend the good gesture of concern to all the vulnerable groups.

We expect that political parties will comply with requirements of nomination as per the Elections Act 2011. We remind the political parties that the list they present to IEBC must include female and male alternates in their list of priority and also prioritize persons with *disabilities*, the Youth and any other candidates representing marginalized groups.

IEBC must ensure party members are allowed to nominate candidates for both elective and nomination positions without interference from both national and local leaders of the various parties. **IEBC must also reject any nominated candidate by a political party if such candidate falls short of the prescribed qualifications. Further, IEBC is required to publish the final party lists in at least 2 newspapers with nationwide circulation.**

Security agencies must ensure the exercise is conducted in a peaceful manner.

#### SPECIAL INTERVENTION FOR VULNERABLE GROUPS

The National Gender and Equality Commission urges the State, the Inspector General in charge of the police service, IEBC, political parties and the media to ensure that:-

- Adequate security measures are accorded to all aspirants with priority given to the women, persons with *disabilities*, youth and other vulnerable candidates during party nominations, political rallies, polling and announcement of the results.
- Party resources are equitably shared among the candidates and special consideration be accorded to women, youth and the persons with disabilities.
- Fair media coverage is accorded for all candidates including women, youth aspirants, *persons with disabilities* and especially those in marginalised regions.
- Political parties provide disability friendly communication materials and equipment in the nomination process including availing the services of sign language interpreters in all the nomination meetings and Braille material.

#### MARCH 4<sup>TH</sup> 2013 GENERAL ELECTIONS

The National Gender & Equality Commission advises that the following measures be put in place on the day of the voting exercise:-

- Disability friendly polling materials including Braille and sign language interpreters be availed in all polling stations;
- Logistical support including transport and mobility to be provided to persons with disabilities and *older members of the society*;
- A complaint handling desk to be set up by IEBC to handle issues of discrimination during the electoral process; and
- Priority to be given to the, persons with disabilities, expectant and breastfeeding mothers, *older members of the society* and the sick on the voting day.

#### THE ROLE OF NGEC IN THE ELECTION PROCESS THE NATIONAL GENDER & EQUALITY COMMISSION WILL:

- Monitor closely the party nominations exercise and the voting process to ensure no Kenyan suffers any form of discrimination and or violence.
- That violence will be prosecuted immediately and the individuals concerned barred from participating in the election process. To this end, we notify all the concerned that we have established a hotline Tel No.020 2716236 for any Kenyan to give us information on all aspects of indirect or direction discrimination or violations of the fundamental principles.
- Hold accountable individuals and or institutions that do not adhere to the fundamental freedoms as per the law.
- Will closely work with the Police Force, the Office of Director of Prosecutions and the Judiciary to enforce sanctions on any commission of election offences especially those related to undue influence that include use of violence including sexual violence, restraint or material, physical or spiritual injury, harmful cultural practices, damage or loss among others as per the Elections Act 2011.

**WE TRUST POLITICAL PARTIES WILL RECOGNISE LEADERSHIP WITH A DIFFERENCE AND ACCORD THE VULNERABLE PERSONS AN OPPORTUNITY TO PARTICIPATE IN GOVERNANCE OF THIS COUNTY. LET US ACCEPT LEADERSHIP OF WOMEN, PERSONS WITH DISABILITIES AND OTHER VULNERABLE GROUPS. IT IS THE RIGHT THING TO DO.**