

BRIEF ON THE IMPLEMENTATION OF THE SUPREME COURT ADVISORY ON THE NOT MORE THAN 2/3 OF ONE GENDER PRINCIPLE

20 MAY 2016

1.0 Background

This brief covers developments for the period February 2016 to May 2016. There were two 2/3rd gender bills tabled in parliament in 2015 (i) the Chepkonga bill and (ii) the TWG/Duale bill that was adopted and tabled by Hon. Duale. The second reading and voting for Duale/TWG bill was done in two sessions; 27th April and 5th May 2016 due to lack of quorum in the first session. In the first voting round, the bill garnered 195 yes votes, 27 Nos and 2 abstainers. 59 women MPs voted and 9 did not show up for various reasons. The second voting saw 178 yes votes for the bill, 16 No votes and 5 abstainers. 63 women MPs voted Yes, and 5 did not show up.

In some respects this was a good start as it showed the results of the intense lobbying that has been done to date. It also showed that there is support for the bill from MPs, despite arguments to the contrary. These numbers are a strong starting point for garnering the full support required to pass the bill.

The National Gender and Equality Commission (NGEC) and the Ministry of Public Service, Youth and Gender Affairs organized two stakeholders meetings on 10th and 12th May 2016 with support of UN Women to reflect on the second voting for the Duale Bill. The meetings were also to reflect on the lessons learned, challenges, what did not work and would need to be improved as well as possible new strategies.

In the lead up to the bill being presented in parliament, NGEC and civil society partners coordinated media appearances for male and female champions of the bill; reached out to religious networks including the Nairobi Mothers Union, the Anglican Church leadership, officials of the Presbyterian Women's Guild and the Catholic Women Association; engaged male leadership of the Parliament through parliamentary regional caucuses and launch of the HeforShe campaign as part of this year's International Women's Day celebrations.

1.1 Current Position

NGEC issued an advisory opinion to the President on 11th May 2016 regarding the National Assembly's failure to pass the constitution of Kenya (amendment) (no. 4) bill of 2015. The advisory highlighted the following key points:

- (i) *The Constitution of Kenya is the supreme law of the land and must be implemented in the manner provided for and as per the advisory of the Supreme Court in Advisory Opinion No. 2 of 2012 in the matter of the two-thirds gender principle. Parliament therefore has no option but to enact a legislative framework that will*

guarantee implementation of the two-thirds gender principle on or before 27th August, 2016 failure of which, provision of Article 261(5) (6), (7), (8) and (9) will come into play.

- (ii) Measures must therefore be taken to return "The Two-Thirds Gender Bill" to Parliament as soon as possible. Failure to do so, leaves Parliament at risk of being dissolved before its term expires or prior to the 2017 elections as it does not meet the principle. Rejection of the bill at this point in time is not an option as there is a formula on the table guaranteeing implementation of the principle as required in the Constitution and the Supreme Court advisory opinion.*
- (iii) The speaker of the National Assembly has powers under **standing order No. 1** to reintroduce the Bill for a second reading for a third time owing to its importance and the strict timelines we are operating on – with slightly over three (3) months left to the **August 27th** deadline.*
- (iv) In the meantime, the Bill should be introduced in the Senate to begin going through the stages owing to the provisions of Article 256 (1) (c) which require ninety (90) days to lapse between the 1st and the 2nd Readings for Constitutional amendment bills.*

Next steps

The stakeholder meeting held in agreed on the following:

- ✓ Chepkonga Bill cannot be one of the options for the reason that it will negate the implementation of the principle rather than facilitate its implementation it also requires the amendment of the constitution since the changes sought in 81(b) would need to be also effected in 27(8).
- ✓ A technical team comprising NGEN, State Department for Gender Affairs and three women leaders to explore the possibility of working with the Senate to re-table the Duale Bill or work with the Sijeni Bill previously tabled in Senate. The technical team was also specifically tasked to:
 - (a) Consult with MPs including the clerks for matters relating to timings and Parliamentary procedures involved.
 - (b) Develop a legal opinion on the possibilities of re-introducing the Duale Bill at the National Assembly and whether it is possible to introduce the Bill in the Senate before it is time barred.
- ✓ Women's rights groups and other CSOs to continue with their lobbying. This will include a delegation to the President with the following key messages:
 - (a) He act to have the Duale Bill to be reintroduced in the National Assembly for a 3rd vote
 - (b) Act to have the Duale Bill introduced in the Senate for 1st reading on or before 27th May, 2016

- (c) That he mobilizes the Jubilee coalition in support of the bill in both the National Assembly and Senate.
- ✓ Other delegations would be organised to see the CORD coalition, Deputy President, Senate minority leaders Moses Wetangula, Chepkonga and both Speakers. DP and Wetangula largely because majority of the Members who voted against the Bill are from Rift Valley and Western regions.
 - ✓ All institutions present were asked to consider mobilising and sensitizing Kenyans to understand the bill and create support and pressure from the grassroots. The meeting acknowledged that the process leading to the defeat of the Duale Bill lacked pressure from the ground mainly due to lack of understanding on the Bill. NGEC committed to provide messages on two-thirds to URAIA for dissemination at the grassroots level.
 - ✓ If all the above efforts fail, then to resort to the ongoing popular initiatives (provided for in the Constitution) such as the **Green Movement** and the **Thuluthi Mbili campaign**, to compel parliament to pass a bill. CMD has so far collected 300,000 signatures on the Thuluthi Mbili campaign. It was discussed that the two popular initiatives needed to be harmonised and forged as one strong alternative.
 - ✓ The CSOs and NGEC have an option to file the matter in court for an advisory opinion on the interpretation of the outcome of the vote against the set deadline of August 27th 2016 and recommend a way forward. NGEC is considering this option.

In conclusion, all stakeholders were requested to focus on:

- (a) Intensifying civic and voter education to create awareness and educate citizens on the value of representation of both genders at decision making level.
- (b) Continued advocacy and lobbying with key political stakeholders for the implementation of the 2/3rds gender bill.

An independent market research company, Ipsos conducted a survey on public awareness of the two thirds gender rule. Find the comprehensive results [HERE](#)