



30th July 2015

**Memorandum on the Two-Thirds Gender Rule Laws (Amendment) bill, 2015 and
Constitution of Kenya Amendment Bill, 2015**

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ABOUT TISA

The Institute for Social Accountability (TISA) is a civil society organization committed towards the achievement of sound policy and good governance in local development, to uplift livelihoods of, especially, the poor and marginalized in Kenya. TISA has been operational since March 2008, and is a locally registered Trust that has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya.

Achieving Gender Equity

TISA commends ongoing efforts towards the achieving gender equity in the membership elective bodies as articulated in Article 81(b) of the constitution and further safeguarding the principle of equality among sexes in terms of access to opportunities as indicated in article 27(b) of the constitution.

The court sought to shed light on the nature of the two-thirds principle observing that principles and policy declarations of this nature signify a *value system, an ethos, a culture, or a political environment within which the citizens aspire to conduct their affairs and to interact among themselves and with their public institutions*. The court further stated that their ruling was inclined to pronounce an advisory in favour of an

interpretation that *contributes to the development of both the prescribed norm and the declared principle or policy.*

It is in light of the foregoing that this memorandum is written on the options available for the realization of gender equity is written.

RECOMMENDATIONS

1. Two-Thirds Gender Rule Laws (Amendment) bill, 2015

General Overview

It is notorious for the bill to propose the progressive representation of women in the national and county assemblies contrary to constitutional provisions and the advisory of the court. The National Assembly should desist from legislating outside law.

Proposed amendments to the National Gender and Equality Commission Act, 2011

The proposed functions of the National Gender and Equality Commission in the bill are in line of international standards of government units of similar character in protecting not only the interest of women but also the interest of other marginalized entities in the society in elections and appointments of such groups into public bodies. Further to this, the strengthening of the commission ensures the culture of marginalization of women and other special interest groups is addressed. This is in order as it aligns to the Supreme Court Advisory.

Proposed amendments to the Political Parties Act, 2011

Definition of ethnic and other minorities is inadequate. According to International law, minorities are defined as:

“ A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”¹

This means that for a group to be considered an ethnic minority there has to be a conscious attempt to protect their culture and traditions by the way they live.

Proposed amendment to the Elections Act, 2011

¹ Office of the high commissioner on Human Rights, Who are minorities under international Law? Retrieved from <<http://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx>>

Maintain the proposed amendment but delete the phrase “To progressively” to thus empower the commission to make recommendations on the realization of the 2/3 gender rule for subsequent elections.

However, because of the court ruling and the proximity of the next elections, there is need for a method of realizing the gender rule immediately.

2. Constitution of Kenya Amendment Bill, 2015

The court in an advisory opinion rendered a decision over the election’s date for the second elections after the promulgation of the constitution and set the date to 8th August 2017. It is unfortunate that the assembly again seeks to exercise its powers over the supremacy of the constitution.

The reasons for the amendment as provided in the memorandum of objects and reasons are inadequate. In 2013, elections were held in March. Hence the forth coming elections will not be the first one not held in December as has been the practice and law under the previous constitutional dispensation. August is a holiday month for school attending children and employers are compelled by law to grant their employees time to vote during a general elections.

Therefore, TISA categorically denounces this attempt to amend the constitution.