



MEMORANDUM SUBMITTED TO THE MULTI-  
STAKEHOLDER WORKING GROUP ON THE TWO  
THIRD GENDER PRINCIPLE

NOVEMBER 2023

# NATIONAL WOMEN STEERING COMMITTEE MEMORANDUM SUBMITTED TO THE MULTI STAKEHOLDER WORKING GROUP ON THE TWO THIRD GENDER PRINCIPLE

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## Women's Position Paper on legislation on the two third gender principle

### BACKGROUND

We the women of Kenya under the auspices of the National Women's Steering Committee-NWSC<sup>1</sup> welcome and celebrate the formation of the Multi stakeholder Working Group- MWSG on the two third gender principle formed by the Ministry of Gender, Culture, The Arts and Heritage. This is a step in the right direction towards the inclusion of Kenyan women.

As the NWSC, we engaged our members and stakeholders at the national and county levels through physical and virtual meetings to discuss the status of women's representation and the implementation of the two third gender principle. Our position is as will be highlighted below.

### INTRODUCTION

We regrettably wish to highlight that 13 years since the promulgation of the Constitution of Kenya 2010, which provides for equality and freedom from discrimination and three elections in (2013, 2017, and 2022), there is no mechanism to attain gender balance in elective office. This can be partly attributed to the misconception that the two third gender principle is a women only agenda. Contrary to this belief, it protects either gender from under representation; COK 2010 Art 27(8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies *shall be of the same gender*.

It is disheartening that despite there being some proposals on the actualization of the two third gender principle through legislation, some legislators have not been keen on supporting efforts towards the same. Within this period we have observed with dismay as some of them supported initiatives proposing to have the two third gender principle realized progressively. This is relegating women to the periphery and insinuating their representation is neither important nor a priority. The legislation and subsequent actualization of the two third gender principle is long overdue and urgent. Other legislators supported initiatives that referred to implementing the two

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<sup>1</sup> The National Women's Steering Committee-NWSC is a robust platform which brings together individuals, organisations and networks united to bring voice value and strength to our work on the political and economic emancipation of women. The platform brings the women together from the county level to the national level and aims to translate women's numerical strength into greater bargaining power for the socio-cultural, political, and economic transformative change within women's spheres of influence and is united on the irreducible minimums that bring women out of political and economic exclusion.

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third gender principle as increasing citizens' burden and proposed to scrap affirmative action seats. We want to state categorically that Kenyan women are not and have never been a burden. In fact, excluding them is more costly as it denies the country of the unique perspectives they bring to decision making and planning. Women are not just an option that can be included or excluded at will. Women participated in fighting for the country's independence and daily engage in nation building. Kenyan women have earned their seat at the table!

Women form about 50% of the membership of political parties and have been very effective mobilizers for the parties yet they are excluded from key party leadership positions and elective position through among others negotiated democracy in favor of men. We urge the parties to proportionately include women in key positions and processes.

While electoral management bodies have made considerable strides in enforcing legislation and guidelines towards the actualization of the two third gender principle, a lot still needs to be done to ensure compliance.

The collaboration of relevant state and non-state actors is very key in actualizing the implementation of the two third gender principle. We do hope that this process will bring it to fruition.

### OUR PROPOSALS

#### PROPOSAL 1

- ✓ Retain the current number of constituencies at 290
- ✓ Increase the number of women MPs elected in Affirmative 47 county seats to 136 up from the current 47. The women MPs will be elected by the two adjacent constituencies in each county in counties with even number constituencies, while counties with odd number constituencies will have the last three adjacent constituencies with the lowest population lumped together
- ✓ Have the number of county assemblies fixed in the constitution at 1450. Remove the provision of nominations in the county assemblies for purposes of attaining the not more than two thirds gender rule and instead have the two adjacent wards in each constituency elect one woman making a total of 725 women elected on the special ward seats. Nominations can be reserved for youth, PWDs and ethnic minorities within counties.
- ✓ Have each county elect two senators, one man and one woman

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**Cons**

Women representatives do not benefit from funds such as Constituency Development Fund- NG CDF and Uwezo fund, unlike their elected counterparts from the constituencies. This limits their effectiveness as the community would expect that they support projects like the MPs.

**Pros**

The not more than two thirds gender rule will be met at every election.

**PROPOSAL 2**

We recommend that if after the parties putting in place different mechanisms, there is no gender balance, gender top up lists are considered for nominations post elections. Lift the provisions of Article 177 1(b) to 97 and 98 to ensure the national level meets the gender rule.

This is our preferred proposal as it is easy, well understood as it is being used in the counties and will bring the parliament into immediate compliance.

**Cons**

Discrimination against women nominated as they are seen as representing only themselves and adding numbers without value.

**Pros**

Will immediately address the unconstitutionality of parliament and bring it into compliance with the constitutional not more than two thirds gender rule and is easy to implement because political parties have been using the mechanism at county level for the last three elections.

**PROPOSAL 3**

Political parties to present zebra lists for the candidates going into elections, alternating between male and female candidates. The shortfall in attaining the two third gender principle threshold will be covered by nominations via top up lists. Research on proportion of women elected versus those who vied is almost equal to that on men who vied versus those who were elected. This shows that having more women on the ballot could guarantee that they are elected in huge numbers.

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**Pros**

Puts the political parties at the center of change and encourages more active participation of women in political parties.

**Cons**

Nepotism and favoritism will see many deserving women left out because of women with inside connections and relations to party leaders and decision makers.

**Conclusion**

We implore our fellow citizens to support us in supporting efforts towards legislating on the two third gender principle. Women, who are currently the under-represented gender bring unique and rich perspectives in decision making and planning. Kenyan women have shown their mettle in top leadership spaces in other sectors and we can trust them in working with men to steer our country in the right direction.

**Submitted in November 2023**

**By the National Women Steering Committee- NWSC Kenya**

\_\_\_\_\_ **County Chapter**

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<b>NO</b>	<b>Name</b>	<b>Organization</b>	<b>Sub county</b>	<b>Sign</b>
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