

Example: The nominations of female senators, members of county assembly, members of parliament and other leadership positions have inspired girls and young women to aspire to be leaders.

➤ Prevention of Conflict

Giving opportunity to women to occupy both elective and appointive leadership positions will promote diversity and encourage public welfare for common good which in turn decreases the potential for conflict as the members of the society find themselves at the same level politically, economically and socially. Furthermore, this form of affirmative action creates harmony which is socially just and morally desirable for every county's development.

g) CONCLUSION

Essentially the implementation of 2/3rds gender principle and other provision of the bill of rights purposefully promotes the dreams and aspirations of Kenyan people, enhances democracy, equality and participation by all Kenyans and promotes the rule of law for sustainable development.

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FACT SHEET ON TWO THIRDS GENDER PRINCIPLE

a) What is affirmative action?

Affirmative Action is deliberate step to reforming or eliminating past and present discriminations using, the law, a set of public policies and/or initiatives designed to stop discrimination on the basis of colour, creed, geographical location, race, origin, gender among others.

b) Does Affirmative Action mean Punishing Men while Favouring Women?

Affirmative action comprises of programmes and policies designed to redress any disadvantage historically or presently suffered by an individual or group of people (male or female). The groups include women, people living with disability, male and female youth and marginalized communities.

The objective of affirmative action is to give both men and women full effect of realizing the rights guaranteed by the bill of rights provided in the Constitution.

c) What is 2/3rds Gender Principle?

The 2/3rds gender principle means that not more than 2/3rds members of any appointive or elective position should be of the same gender.

Example: If there are 12 positions for board of governors for Mtihani Secondary School, Men cannot occupy more than 8 positions or at least 4 members must be women or vice versa.



The 2/3rd gender principle is a form of affirmative action that is aimed at allowing women to take up at least 1/3rd of all appointive or elective leadership opportunities.

d) Does the law support two third gender principle

The 2/3rd Gender Principle is anchored in the Kenyan Constitution, the supreme law of the country. The Constitution embraces International principles of fair treatment and respect to all human beings by stating that:-

“... women and men have the right to equal treatment, including the right to equal opportunities in political, economical, culture and social sphere” – Article 27(3)

- Article 27(4) provides that the state shall not discriminate anyone on the basis of sex, race, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- Article 27(8) obligates the state to take legislative and other measures to implement the principle that not more than 2/3rd of the members of an appointive or elective position shall be of the same gender.
- Article 81(b) provides that electoral systems in Kenya shall ensure that no more than two thirds of elective positions are occupied by persons of the same gender.

e) Kenyan Supreme Court Advisory Opinion (Reference No. 2 of 2012)

In 2012, the Attorney General of Kenya sought the Supreme Court's opinion on effecting the 2/3rd gender principle. The majority of the Supreme Court judges advised that the gender principle should be achieved progressively. However, the Chief Justice Hon. Willy Mutunga dissented and advised that the Constitution of Kenya is elaborate and complete in its own interpretation of its various articles; hence on matters of bill the of rights, the State cannot defer implementation of the rights when the Constitution does not expressly provide so.

f) What are the benefits of two thirds gender principle?

➤ Remedies Historical injustice

The 2/3rd gender principle is aimed at bringing a group of people who have suffered historical injustice in the form of power imbalance to the same level with the advantaged group that has always enjoyed certain privileges.

Example: Throughout the history of the world, women have been discriminated in various ways. The genesis of this subordination is traced to evolution of the class society which organized itself into institutions that gave men control of the means of production (control of economic domain) and control over the political arena (Political leadership).

Other factors include cultural structure, religious reference and stereotypes such as women's child care role will interfere with their taking up of leadership positions. These factors denied women the opportunity to pursue economic development, education and/or leadership positions. With implementation of the 2/3rd Gender Principle, women will have the chance to take up opportunities without any fear of discrimination.

➤ Creation of opportunities

The 2/3rd Gender Principle will create opportunities for women to showcase their talents, skills, and leadership qualities which for years have been exhibited in supporting families as the core unit of the society but have frequently been ignored. The principle will unearth untapped talent useful for the Country's development.

➤ Role Models

The action of including women in all elective and appointive positions will provide role models for boys and girls to motivate them to be confident that excellence can be achieved by both men and women and that inclusion leads to a fair society.