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MPS CAUCUS PUSH FOR LAW REFORMS AHEAD OF THE 2022 GENERAL ELECTIONS

Background

Following the Constitutional and Human Rights Division of the High Court of Kenya Ruling that termed the Constitutional (Amendment) Bill, 2020 as Unconstitutional, null and void, a group of 13 bipartisan parliamentarians, drawn from across the political spectrum, have expressed interest in pushing for minimum reforms ahead of the 2022 general elections.

Citing uncertainty of when or what the Appellate Court ruling could be, the lawmakers are keen on ensuring that select proposals in the BBI are brought before both houses and amended. This initiative mirrors the 1997 Inter-Parties Parliamentary Group (IPPG) where a section of the opposition and its allies within the National Assembly, were keen to ensure free and fair elections. This was after a long-drawn clamor for reforms as the then ruling regime under KANU bowed to Civil Society pressure on agitation for free, fair and credible elections. The IPPG of 1997 led to arguably Kenya's most authentic general elections. This also saw various political sides contribute to the composition of the then Electoral body, Electoral Commission of Kenya.

Proposals

The Zero draft is being worked on by the technical team to try and have minimum reforms ahead of the 2022 general elections that are akin to the IPPG of 1997. These proposals include:

- Creation of a Prime Minister's Position
- Increasing allocation to the counties
- Creation of the Ward Development Fund
- Reforms for electoral and security laws
- Anchoring the CDF in law
- Ensuring the Executive's presence in parliament
- Expediting corruption cases
- A push for the equalization fund to the counties
- Operationalizing the two thirds gender rule

Scenarios

1: Operationalizing the two-thirds gender principle

In reference to the two thirds gender principle, it is clear that most of these parliamentarians have in four occasions had the leeway through the National Assembly and Senate to go ahead and implement the ruling but they have failed miserably. How then can Kenyans trust them with this process. This solution could somehow be cured through the BBI in the event that the Appellate Court overturns the High Court's ruling.

Retaining the status does not guarantee 2/3 gender rule in the event that BBI is not passed which muzzles the voice of women as they remain structurally disadvantaged.

Passing BBI creates gender parity in the Senate without necessarily making it the Upper House with veto powers over the National Assembly decisions.

BBI recommends 50/50 membership of the Senate and but creates 70 geographical constituencies. 'Top up' still needed to comply with the 2/3 gender rule in the National Assembly and mechanisms for auditing appointive offices for compliance with the view of sanctioning noncompliance.

2: Evolving political contest

Where Kenya was in 1997 is completely different 24 years on. Aware that the BBI process was alive and only posed a bit by the judgement, it would be prudent to allow the court process to be over given that an appeal has already been tabled.

During that IPPG era, Kenya had a long-drawn conversation about amending the Constitution and there was too much pressure on the country to have a new constitutional dispensation in place. That time therefore, it was seemingly acceptable as necessitated by the urgency to address electoral malpractices, violence, voter counting and other reforms within the election cycle unlike today when there is an already ongoing process which if it doesn't go through before the next general elections, there will be a pre and post-election period to look into the issues.

Therefore, the above select proposals will only be viable if the two handshake proponents express their backing for the process taking cognizance of both public and national interests.

3: Kenya's Constitutional situation

Kenya is in no way under any constitutional crisis as the Constitution is a living document that has no vacuum that would warrant a conversation about the IPPG model of spelling minimum reforms before the 2022 general elections.

However, this parliamentary grouping brings about key emerging issues in reference to Articles 255, 256, and 257 which allow for constitutional amendments through a parliamentary initiative.

Conclusion

Anyone trying to champion reforms in the Constitution needs to fully address most if not all of the issues ailing the country as is the case in the Constitutional (Amendment) Bill, 2020 process, including issues surrounding the credibility of Kenya's electoral process. Should the IPPG model take shape, women need to push for the operationalization of the two thirds gender principle in all elective and appointive bodies.

Precedence should be given on how best to address electoral injustices that have been recurrent even during the 2017 general elections. The electoral process in Kenya has been severally abused from the basics of voter counting and transmission of election results which largely led to the nullification of the 2017 presidential elections. Should such reforms be addressed, the country is guaranteed of peaceful, free and fair elections in 2022.